(14)

Supreme Court, U.S.
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No. 01-1269

In the Supreme Court of the United States

CITY OF CUYAHOGA FALLS; MAYOR DON L. ROBART; CITY ENGINEER GERALD DZURILLA, AND CLERK OF COUNCIL GREGG WAGNER,
Petitioners,

v.

BUCKEYE COMMUNITY HOPE FOUNDATION; CUYAHOGA HOUSING PARTNERS, INC.; BUCKEYE COMMUNITY THREE L.P.; AND FAIR HOUSING CONTACT SERVICE, INC.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

VIRGIL ARRINGTON JR.
Counsel of Record
LAW DIRECTOR
CITY OF CUYAHOGA FALLS
2310 SECOND STREET
CUYAHOGA FALLS, OH 44221
(330) 971-8190

Counsel for Petitioners

Petition for Certiorari Filed February 26, 2002
Petition for Certiorari Granted June 24, 2002

298 pp

TABLE OF CONTENTS

Relevant Docket Entries ..... App. 1

Affidavit of Gregg Wagner App.10

Selected Portions of the Charter
of the City of Cuyahoga Falls App.12

City of Cuyahoga Falls Ordinance
No. 48-1996 ..... App.17

City of Cuyahoga Falls Ordinance
No. 1128.08 ..... App.20

City of Cuyahoga Falls Ordinance Chapter
1144 Site Plan Review Regulations App.21

Affidavit of Louis Sharp App.24

Planning Department Staff Summary App.26

Cuyahoga Falls Planning Commission
Wednesday, February 21, 1996 Minutes App.35

Affidavit of Gerald Dzurilla App.53

Joseph Orel and Roy Lowenstein
Testimony App.57

Selected Deposition Pages of Steve Boone .. App.72

Selected Deposition Pages of
Frank Pribonic App.82

Deposition Transcripts of Gerald Dzurilla App.91

Deposition Transcripts of Louis Sharpe App.96

Brian Barnes Appraisal App.99

Allen Fonoroff Report App.102

Letter Dated June 20, 1996 ..... App.110

Letter Dated June 26, 1996 ..... App.112

Deposition Transcript of Don L. Robart App.114

Cuyahoga Falls City Council Planning and Zoning Committee Meeting March 18, 1996 Minutes App.133

Cuyahoga Falls City Council Planning and Zoning Committee Meeting March 4, 1996 Minutes App.171

Affidavit of Gil Barno App.200

Selected Transcript Pages of the Preliminary Injunction Hearing App.204

Sallings Report App.271

Letter Dated June 7, 1995 from Boone to Robart App.292

Fold Out Exhibit 1990 Census Population Profile for Summitt County, Ohio App.294

RELEVANT DOCKET ENTRIES

CIVIL DOCKET FOR CASE #: 96-CV-1458

1	7/5/96	COMPLAINT (Service: summons, magistrate consent form issd) (13 pgs) (jam) [Entry date 07/09/96]
15	7/26/96	ANSWER to Complaint by dfts City of Cuyahoga Falls, Don Robart, Gregg Wagner & Gerald M Dzurilla. (4 pgs) (ja) [Entry date 07/29/96]
32	10/15/96	MOTION by dfts Cuyahoga Falls City, Don Robart, Gregg Wagner & Gerald M Dzurilla for summary judgment w/memo & affdt. (88 pgs) (ja)
33	10/15/96	EXHIBITS by dfts Cuyahoga Falls City, Don Robart, Gregg Wagner & Gerald M Dzurilla in supp of dfts' mot for SJ. (174 pgs) (ja)
48	11/5/96	DEPOSITION of Frank Pribonic taken on the following date (s): 8/30/96 at 1:30 p.m. Fees: none. (91 pgs) (ja)
50	11/7/96	MEMORANDUM by plas in opposition to dfts City of Cuyahoga falls, Don Robert (in his official capacity), Gregg Wagner &

		Gerald Dzurilla (in their official capacity) mot for summary judgment [32-1]. (66 pgs) (tl)
51	11/7/96	REPLY by dfts Cuyahoga Falls City, Don Robart (in his official capacity), Gregg Wagner, Gerald M Dzurilla to response of plas to dfts' motion for summary judgment [32-1]. (26 pgs) (tl)
56	11/14/96	MOTION (copy) by pltfs for preliminary inj re: referendum on repealing ordinance #48-1996 (3 pgs (js) [Edit date 11/14/96]
57	11/14/96	MEMORANDUM by plaintiffs in support of motion for preliminary inj [56-1] w/exh. (79 pgs) (ja) [Entry date 11/15/96]
68	11/22/96	STIPULATION and jointly agreed upon prel inj ord that dft Summit Cty Bd of Elections is barred, stayed & prevented from certifying the results of the recently held 11/5/96 vote on the referendum re: City of Cuyahoga Falls Ordinance 48-1996 [56-1]; this ord shall remain in full force & effect until further ntc of its modification or dissolution. (issued on 11/25/96) (2 pgs) Judge Sam H. Bell (ja) [Entry date 11/25/96]

70	12/6/96	TRANSCRIPT of proceedings of Prel Inj before Judge Sam H. Bell taken on 11/19/96 at 8:30 a.m. by court reporter Richard DelMonico. (198 pgs) (ja)
71	12/6/96	TRANSCRIPT of proceedings of Prel Inj before Judge Sam H. Bell taken on 11/20/96 at 1:15 p.m. by court reporter Richard DelMonico. (140 pgs) (ja)
72	12/6/96	TRANSCRIPT of proceedings of Prel Inj before Judge Sam H. Bell taken on 11/21/96 at 8:30 a.m. by court reporter Richard DelMonico. (80 pgs) (ja)
73	12/9/96	BRIEF by dfts City of Cuyahoga Falls, Don Robart, Gregg Wagner & Gerald M Dzurilla in opposition to motion for preliminary inj [56-1] w/afdt. (18pgs) (ja)
78	12/13/96	ORDER denying plas' motion for preliminary inj [56-1]. (issued on 12/13/96) (9 pgs) Judge Sam H. Bell (ja)
86	2/14/97	REPORT AND RECOMMENDATION that dfts mots for SJ should be granted and this case should be dismissed in its

entirety; fur it is important to note that the recommended decision embodied here does not represent any judgment on the dfts actions on the merits or the referendum. The record clearly conveys the emotional nature of the issues raised by the proposed development. The undersigned, however, has evaluated the legal issues presented in this case detached from the emotion reflected in the record. [34-1], [32-1] (issued on 2/14/96) (58 pgs) Mag. Judge James D. Thomas (sh) Appears in Petitioner's Appendix at 132a.

101	6/20/97	ORDER granting dft Robart's motion for summary judgment [34-1] insofar as it challenges plas' non-race-based equal protection claim; second because dft Robart is entitled to qualified immunity plas may not proceed against him in his individual capacity; further, Mayor's mot for SJ is granted; further, as for balance of dfts' mot Ct finds that plas have provided evidence which, if viewed in their favor, could demonstrate claims founded in due process as well as claims based upon plas' right to

the equal protection of the laws; further, this ord does not contemplate whether plas will ultimately succeed in their claims rather it merely states that plas should be afforded a tr at which they could fairly pursue them. (issued on 6/20/97) (64 pgs) Judge Sam H. Bell (ja) [Entry date 06/23/97] Appears in Petitioner's Appendix at 55a.

105	8/28/97	TRIAL ORDER: Track Designation: standard. Discovery to be complete 2/5/98; disp mots due 3/5/98; resps due 3/25/98 & replies 4/6/98; pretrial conference w/counsel & clients in personal attendance at 1:30 p.m. on 6/22/98; bench trial at 8:00 a.m. on 6/30/98 on 2-wk standby. (issued on 8/28/97) (12 pgs) Judge Sam H. Bell (ja)
115	10/23/97	FIRST AMENDED & SUPPLEMENTAL COMPLAINT by pltfs [1-1] (adding Ohio Capital Corporation for Housing, D E Weatherby & Associates, & J J O Construction Co as new pty pltfs & adding Ohio Dept of Development Ohio Housing Finance Agency, & Tim Davis as new pty nominal

		defts) (no summons provided for issuance) (17 pgs) (jam) [Entry date 10/24/97]
116	10/27/97	ANSWER to 1st Amended Complaint by dfts City of Cuyahoga Falls, Don Robart, Gregg Wagner & Gerald M Dzurilla; jury demand. (4 pgs) (fm)
143	4/2/98	MOTION by pltf Developers for partial SJ (65 pgs) (jam) [Entry date 04/03/98]
145	4/22/98	ANSWER BRF by defendants in opposition to plas' motion for partial SJ [143-1] w/exh. (32 pgs) (ja)
146	5/4/98	REPLY BRIEF in support by pltfs to defts' resp to pltfs' motion for partial SJ [143-1]. (17 pgs) (kv)
151	6/5/98	MOTION by defts City of Cuyahoga Falls, Robart, Wagner and Dzurilla for SJ (21 pgs + 19 exh pgs) (jma)
153	6/17/98	MOTION by pltfs to file brf in excess of 20 pgs instanter (Reply attached) (attach & 1 pg) (jam)

154	6/22/98	REPLY by dfts Cuyahoga Falls City, Don Robart, Gregg Wagner, Gerald M Dzurilla to pla's resp to mot by defts City of Cuyahoga Falls, Robart, Wagner and Dzurilla for SJ [151-1] (44 pgs) (rtp)
172	8/14/98	SUPPLEMENTAL brief by defts Cuyahoga Falls City, Don Robart, Gregg Wagner, and Gerald M Dzurilla in support of their motion for SJ [151-1] (18 pgs) (jma)
173	8/14/98	SUPPLEMENTAL Brf by Developer pltfs in supp of their mtn for partial SJ [143-1] (121 pgs) (jam)
174	8/14/98	SUPPLEMENTAL Reply Brf by pltfs to defts' mtn for SJ [151-1], [34-1], [32-1] (70 pgs) (jam) [Entry date 08/25/98]
175	9/8/98	SUPPLEMENTAL brf in opp by defts Cuyahoga Falls City, Don Robart, Gregg Wagner and Gerald M Dzurilla to motion by pltf Developers for partial SJ [143-1] (14 pgs + 32 exh pgs) (jma)
195	11/29/99	MEMORANDUM, OPINION, AND ORDER: granting motion by defts

City of Cuyahoga Falls, Robart, Wagner and Dzurilla for SJ [151-1] on all counts of the complaint (issued on 11/29/99) (17 pgs) Judge Dan A. Polster [EOD Date: 11/29/99] (jma) Appears at Petitioner's Appendix at 35a.

196 11/29/99 JUDGMENT: Court having filed memorandum and opinion entering jgm for defts on all counts of complaint and dismissing case, as final (issued on 11/29/99) (1 pg) Judge Dan A. Polster [EOD Date: 11/29/99] (jma)

197 12/21/99 NOTICE of Appeal by all pltfs re: memo, opn and order [195-1] & re: jgm entry [196-2] (cc: all counsel-notice only. USCA- notice and doc(s) mailed on 12/27/99) (20 pgs) (shh) [Edit date 12/27/99]

USCA6 DOCKET SHEET FOR 99-4555 AND 00-3052

8/31/01 OPINION filed: REVERSED; decision for publication pursuant to local rule 206 [99-4555, 00-3052]. Nathaniel R. Jones, Authoring Judge, Martha C. Daughtrey, Circuit Judge, R. G. Cole, Circuit Judge. (tmb) [00-3052 99-4555]

Appears at Petitioner's Appendix 1a.

8/31/01 JUDGMENT: REVERSED. (tmb) [00-3052 99-4555]

9/13/01 PETITION for en banc rehearing filed by Virgil E. Arrington for Appellees Cross-Appellants Gerald M. Dzurilla, Gregg Wagner, Don Robart, Cuyahoga Falls. Certificate of service date 9/11/01. [99-4555, 00-3052] (blh) [00-3052 99-4555]

12/4/01 ORDER filed denying petition for en banc rehearing [2422872-1] filed by Virgil E. Arrington [99-4555, 00-3052]. Nathaniel R. Jones, Martha C. Daughtrey, R. G. Cole, Circuit Judges. (blh) [00-3052 99-4555] Appears at Petitioner's Appendix 192a.

[The Following Affidavit Appears as an Attachment to the City's Initial Motion for Summary Judgment in the District Court Record at Document No. 32]

AFFIDAVIT OF GREGG WAGNER

I, Gregg Wagner, being first duly sworn and cautioned, do hereby state as follows:

1. I have personal knowledge of the matters contained herein.

2. I am, and have been at all relevant times, the Clerk of Council for the City of Cuyahoga Falls.

3. On February 29, 1996, legislation was introduced to City Council to approve the site plan for a 72 unit apartment complex on Pleasant Meadow Blvd. This legislation was assigned Temporary Ordinance No. A-39.

4. On April 1, 1996, City Council passed temporary ordinance A-39. This ordinance received the permanent designation of Ordinance 48-1996. Council's vote on Ordinance 48-1996 was six in favor, three opposed and two abstentions. Mayor Robart neither signed nor vetoed the ordinance.

5. On April 29, 1996, electors of the City submitted a referendum petition to me seeking to place Ordinance 48-1996 on the ballot in November, 1996. I submitted this petition to the Board of Elections for the evaluation of the validity of the signatures. On May 1, 1996, the Board of Elections returned the petition to me and indicated that there were sufficient valid signatures on the petition.

6. On May 28, 1996, City Council reconsidered Ordinance 48-1996 and it passed by the same vote as on April 1, 1996. Upon the failure of City Council to repeal the ordinance, I resubmitted the petition to the Board of Elections for placement of the issue on the ballot on November 5, 1996.

7. At all times, I acted in with the intent to comply with the law and the Cuyahoga Falls Charter and without any discriminatory intent.

8. Attached hereto are true and accurate copies of the following documents:

Exhibit A: The Cuyahoga Falls Charter

Exhibit B: Cuyahoga Falls Ord. 48-1996

Exhibit C: Cuyahoga Falls Ord. 77-1991

Exhibit D: Cuyahoga Falls Codified Ord. 1128.08

Exhibit E: Cuyahoga Falls Codified Ord. 1144.03

FURTHER AFFIANT SAYETH NAUGHT

s/ _____
Gregg Wagner

The foregoing was sworn to and subscribed in my presence by Gregg Wagner this 11th day of October, 1996.

s/ _____
Sharon Sands
Notary Public
My commission expires March 26, 1998

[The Following Are Selected Portions of the Cuyahoga Falls Charter Which Appears as an Attachment to the City's Initial Motion for Summary Judgment in the District Court Record at Document No. 32]

SELECTED PORTIONS OF THE CHARTER OF THE CITY OF CUYAHOGA FALLS

* * *

ARTICLE II
MAYOR

* * *

SECTION 5. MAYOR'S VETO.

An ordinance or resolution passed by the Council shall be signed by the President of Council or other presiding officer of Council and presented forthwith to the Mayor by the Council Clerk. If the Mayor approves such ordinance or resolution, he shall sign it within ten (10) days after its passage or adoption by the Council, but if he does not approve it, he shall return it to the Council with his objections within said ten (10) days, or if the Council be not then in session, at the next regular meeting thereof, which objections the Council shall cause to be entered in full on its journal. If the Mayor does not sign or so return an ordinance or resolution after its passage or adoption, within the time specified, it shall take effect in the same manner as if he had signed it. The Mayor may approve or disapprove the whole of any item or part of any item or

part of any ordinance or resolution appropriating money. When the Mayor refuses to sign an ordinance or resolution or part thereof and returns it to the Council with his objections, the Council may, prior to the expiration of not more than fourteen (14) days, from the date of its return, proceed to reconsider it, and, if upon reconsideration the resolution or ordinance or part or item thereof disapproved by the Mayor be approved by the vote of two-thirds (2/3) of all members of Council, it shall take effect without the signature of the Mayor in the same manner as if he had signed it. In all such cases, the votes shall be taken by "yeas" and "nays" and entered individually on the journal.

* * *

ARTICLE VIII
ZONING AND PLANNING
SECTION 1. PLANNING COMMISSION.
SECTION 1.7 SUBMISSION OF DECISION TO COUNCIL.

All plans, recommendations, regulations and decisions made by the Planning Commission which result in approval of requests, shall be submitted to and approved by Council before the same shall be considered as official. All decisions made by the Planning Commission, except those rendered under the authority of Section 1.9, Mandatory Referrals, and which decisions deny the request made in the application, may be appealed to Council according to procedures heretofore or hereafter established by the

Council of the City of Cuyahoga Falls. Any request disapproved by formal action of the Planning Commission under any authority granted by this Charter or ordinance and subsequently appealed to Council, shall require a two-thirds vote of all members elected or appointed to the Council for adoption or authorization. A vote of less than two-thirds shall be considered an affirmation of Planning Commission action. (Amended 11-2-65.)

* * *

ARTICLE IX
INITIATIVE, REFERENDUM, RECALL

* * *

SECTION 2. REFERENDUM.

The electors shall have the power to approve or reject at the polls any ordinance or resolution passed by the Council, except as hereinafter provided. Only electors of the City may circulate referendum petitions. Within thirty (30) days after the passage by the Council of such ordinance or resolution or its repassage over the Mayor's veto, whichever is later, a petition signed by at least ten percent (10%) of the electors of the City may be filed with the Clerk of the Council, requesting that such ordinance or resolution be either repealed or submitted to a vote of the electors. If said petition is signed by twenty percent (20%) or more of such time of filing thereof. When such petition is filed, the Clerk shall first ascertain the sufficiency of the petition, and if found sufficient, the Council shall thereupon, within thirty (30) days of the

filing of such petition, reconsider such ordinance or resolution. If upon such reconsideration the ordinance or resolution is not repealed, the Council shall provide for submitting it to a vote of the electors on the date so fixed, or, if not so fixed, at the first general election in any year occurring more than ninety (90) days from the filing of such petition. No such ordinance or resolution shall go into effect until approved by a majority of those voting thereon, in which event such ordinance or resolution shall go into effect on the fifth day after the day on which the Board of Elections certifies the official vote thereon. When the Council by general law or under provisions of general ordinance is required to pass more than one ordinance or resolution necessary to make and pay for any public improvement, the referendum provision shall apply only to the first ordinance or resolution required to be passed and not to any subsequent ordinances or resolution relating thereto. In addition, ordinances providing for an annual tax levy or for improvements petitioned for by the owners of a majority of the foot front of the property benefitted and to be specially assessed therefor, and appropriation ordinances limited to the subject of appropriations shall not be subject to referendum, but, except as herein provided, all other ordinances and resolutions necessary for the immediate preservation of the public peace, health or safety, including emergency ordinances and resolutions necessary for the immediate preservation of the public peace, health or safety, shall be subject to referendum, except that such emergency ordinances and resolutions shall go into effect at the time

indicated therein. If, when submitted to a vote of the electors, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder; but such measure shall be deemed sufficient authority for payment, in accordance therewith, of any expense incurred previous to the referendum vote thereon. s

Ordinances or resolutions submitted to the Council by initiative petition and passed by the Council either with or without change, but not submitted to a vote of the electors shall be subject to referendum in the same manner as other ordinances or resolutions. (Amended 11-4-80.)

[The Following Ordinances Appear as an Attachment to the City's Initial Motion for Summary Judgment in the District Court Record at Document No. 32]

CITY OF CUYAHOGA FALLS
ORDINANCE NO. 48-1996

AUTHORIZING AND APPROVING THE PLAN FOR DEVELOPMENT OF A 72 UNIT APARTMENT COMPLEX IN THE 300 BLOCK OF PLEASANT MEADOW BOULEVARD IN AN R-17 MEDIUM DENSITY MULTIPLE FAMILY ZONING DISTRICT AND DECLARING AN EMERGENCY.

WHEREAS, the Charter of the City of Cuyahoga Falls requires that all decisions made by the Planning Commission be submitted to Council, and

WHEREAS, a site plan review by the Planning Commission is required for this development of land located in an R-17 Medium Density Multiple Family zoning district within the City of Cuyahoga Falls, Ohio, and

WHEREAS, on February 21, 1996, the Planning Commission approved the site plan for development of a 72 unit apartment complex in the 300 block of Pleasant Meadow Boulevard within the City of Cuyahoga Falls, Ohio.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls, County of Summit, and State of Ohio:

SECTION 1. That this City Council approves the plan for development of land situated in an R-17 Medium Density Multiple Family zoning district in accordance with such district and zoning regulations as stipulated in the Codified Ordinances of the City of Cuyahoga Falls and as approved by the Planning Commission as per the plans and stipulations contained in Planning Commission File P-6-96-SP.

SECTION 2. That any other ordinances or resolutions or portions of ordinances and resolutions inconsistent herewith be the same are hereby repealed, but any ordinances and resolutions not inconsistent herewith and which have not previously repealed are hereby ratified and confirmed.

SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements ding Section 121.22 of the Ohio Revised Code.

SECTION 4. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, convenience and welfare of the City of Cuyahoga Falls and the inhabitants thereof, for the reason it is immediately necessary to permit timely and appropriate development of this property, and

provided it receives the affirmative vote of two thirds of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force at the earliest period allowed by law.

Passed: 4/1/96 s/ _____
President of Council

Approved: _____ s/ _____
Clerk of Council

_____
Mayor

CITY OF CUYAHOGA FALLS
ORDINANCE NO. 1128.08
SITE PLAN APPROVAL

A development containing three or more buildings or in excess of eight units shall be permitted only after the review and approval of the site plans by the Planning Commission in accordance with Chapter 1144. In addition to the provisions of Chapter 1144, the Commission shall be guided by the intent and purpose of the R-17 District in making its judgment of the site plans.

(Ord. 190-1974. Passed 7-22-74.)

CITY OF CUYAHOGA FALLS
ORDINANCE CHAPTER 1144
Site Plan Review Regulations

1144.01 PURPOSE.

The purpose of this chapter is to provide adequate review by the Planning Commission of proposed development in those zoning districts where the uses permitted are of such a nature because of their size, scale or effect on surrounding property, that review of specific plans is deemed necessary to protect the public health, safety and general welfare of the community. (Ord. 190-1974. Passed 7-22-74.)

1144.02 APPLICATION.

In addition to submitting the plans and other data required by the Building Department, an applicant for a building permit in any district requiring site plan approval shall submit a plan of development to the Planning Commission as set forth in Section 1144.03.

(Ord. 190-1974. Passed 7-22-74.)

1144.03 SITE PLAN REQUIREMENTS.

No building permit or certificate of occupancy shall be issued for the construction or any use of any building in such district except in accordance with a plan of development approved by the Planning Commission. Such plan of development shall show in addition to the information required by the Building Department the location and height of all buildings and structures, the area devoted to parking facilities and accessory buildings, all access roads and drives, the topography and major vegetation features now

existing on the land, the proposed grading, landscaping and screening plans, green area and such other features necessary for the evaluation of the development plan.

(Ord. 190-1974. Passed 7-22-74.)

1144.04 PLANNING COMMISSION CONSIDERATION.

The Commission shall consider the location of buildings, parking areas and other features with respect to the topography of the lot, existing natural features such as streams and large trees, the efficiency, adequacy and safety of the proposed layout of internal streets and driveways, the location of the green area provided, bearing in mind the possible effects of irregularly shaped lots, the adequacy, location, landscaping and screening of the parking lots and such other matters as the Commission may find to have a material bearing upon the stated standards and objectives of the various district regulations.

If the Commission finds that a proposed plan of development does not meet the purposes of this Zoning Ordinance, it shall disapprove the plan and shall submits its findings in writing, together with the reasons therefor, to the applicant, within sixty days after having received the site plan. If no action has been taken by the Commission within such time, then such plan shall be deemed to have been approved; provided, however, that the applicant may waive this time limit and consent to the extension of such period, in which event he shall give notice of the waiver to the Planning Commission.

(Ord. 190-1974. Passed 7-22-74.)

1144.05 APPROVAL OF SITE PLAN.

A plan of development shall remain valid for a period of twenty-four months following the date of its approval. If at the end of that time, construction shall not have begun, then such plan of development shall be considered as having lapsed and shall be of no effect unless resubmitted to the Commission and reapproved. All construction and development under any building permit shall be in accordance with the approved site development plan. Any departure from such plan shall be cause for revocation of a building permit or denial of an occupancy permit. Any changes in an approved plan shall be resubmitted for approval in accordance with this section. Construction shall be deemed to have begun when all necessary excavations and piers or footings of one or more principal buildings included in the development plan shall have been completed.

(Ord. 190-1974. Passed 7-22-74.)

[The Following Affidavit Appears as an Attachment to the City's Initial Motion for Summary Judgment in the District Court Record at Document No. 32.]

AFFIDAVIT OF LOUIS SHARPE

I, Louis Sharpe, being first duly sworn and cautioned, do hereby state as follows:

1. I have personal knowledge of the matters contained herein.

2. I am, and have been at all relevant times, the Planning Director for the City of Cuyahoga Falls. My duties as Planning Director include the presentation of staff summaries to the Planning Commission for the review of site plans.

3. On January 29, 1996, Buckeye Community Three, L. P. (Buckeye) filed an application for site plan review with the Planning Commission for a proposed 72 unit apartment complex to be built on Pleasant Meadow Blvd. in the City of Cuyahoga Falls. The land on which the apartment complex was proposed for development is zoned R-17, a multi-family residential classification.

4. I prepared a staff summary with a recommendation for the Planning Commission with respect to Buckeye's project. Attached hereto as Exhibit A is a true and accurate copy of my Staff Summary.

5. Buckeye's site plan was reviewed by the Cuyahoga Falls Planning Commission on February 21, 1996. Steven Boone attended this meeting on behalf of

Buckeye. At the meeting, I presented my Staff Summary (Exhibit A hereto) and orally read its nine stipulations. Mr. Boone voiced no objection to the nine stipulations.

6. The Planning Commission approved the site plan subject to the nine stipulations recommended by me. Attached hereto as Exhibit B is a true and accurate copy of the amended minutes of the February 21, 1996, meeting of the Planning Commission.

7. As of the date of this affidavit, the fence required by stipulation number 8 of my staff summary which was adopted by the Planning Commission and City Council has not been constructed on the site of the proposed Pleasant Meadow Blvd. apartment complex.

FURTHER AFFIANT SAYETH NAUGHT

/s/ _____
Louis Sharpe

The foregoing was sworn to and subscribed in my presence by Louis Sharpe this 12th day of October, 1996.

/s/ _____
Notary Public

My Commission expires never (Atty).

Cuyahoga Falls Planning Commission
23 l0 Second Street
Cuyahoga Falls, Ohio 44221
216/971-8142 or FAX 216/971-8168

STAFF SUMMARY

File P-6-96-SP:

SITE PLAN REVIEW - Request to construct 72 apt. units in eleven buildings on 6.29 acres of land at a density of 11.44 units per acre on the south side of Pleasant Meadow Blvd. Located in an R-17 Medium Density Multiple Family Zoning District. Buckeye Community Three Ltd. Partnership*, owner. D.E. Weatherby & Assoc., Inc., agt.

BACKGROUND

This site is also known as the 300 block of Pleasant Meadow Boulevard. The property was zoned R-3 Residential Multi-Family Zoning in the former Northampton Township and upon merger entered the City of Cuyahoga Falls zoned R.-17 Medium Density Multiple Family in accordance with the Merger Agreement. At the time of merger, the site was vacant and fronted on an unimproved Summit County utility easement that served as an access road for several apartment/condominium units on the north side of the easement. Through a process involving street dedications, private construction of a public street and the 1989 Pleasant Meadow Apartments Subdivision.

Pleasant Meadow Boulevard was dedicated and fully improved to its current terminus approximately 1,500 feet west of Wyoga Lake Road. In December of 1989, the site in question was approved for the

construction of 92 townhouse units. The project, however, was never completed and the property sold in 1995 to Buckeye Community Three Ltd. Partnership..

Property abutting to the north, east and west is zoned R-17 Medium Density Multiple Family. Apartments, condominiums, and townhouses abut all but the west property line. To the south, at the rear of the property, the zoning is R-8 Single Family, Two Family and Planned Residential Development and is developed as the Prescott Green Condominium complex.

SUMMARY

The plan calls for 72 units in eleven buildings at a density of 11.44 units per acre. One hundred and forty-eight (148) parking spaces are provided at a ratio of 2.06 spaces per unit. All buildings and parking will be setback 30 feet from Pleasant Meadow Boulevard. The rear of several buildings face the east and west side yards and will be setback 30 feet. The rear buildings abutting the Prescott Green development will be setback 50 feet from the property line with the rear yard sloped upward from the building finished floor elevation (1015), 4 to 5 feet to an elevation of 1019/20. A 5 ft. high batten board fence with brick pilasters (6 ft. high) will be placed along the rear property line. Assorted deciduous and evergreen trees will be planted in the yard area (see Landscape Plan). A large open lawn area will occupy the center of the site surrounded by building and interior parking. All parking areas and drives face the entrances of the

buildings and are in the interior of the lot with yard areas at the site perimeter devoted to lawn and open space. Storm water will be collected on site with detention incorporated into the design of the parking lot. Outflows are to the Pleasant Meadow Boulevard storm sewer system which flows into Mud Brook. Parking lots and drive[illegible] are bounded by 6" x 18" concrete curb or combi[illegible]on raised walk and curb.

The eleven buildings are of three types, two type A's which are each 8 unit stacked, 2 bedroom walk up units, eight type B's which are 6 unit, 3 bedroom, 2 floor townhouses and one type C which is an 8 unit building with six 3 bedroom townhouses similar to Building B but with two one-story, 3 bedroom handicapped units on either end.

All buildings will be constructed of brick on the first floor (all sides) and siding above. The following table reflects the perfected requirements of the City Zoning Code.

	Code Requirement	**Provided**
Lot Size	.275 acre	6.29 acres
Lot Area per Unit	2,500 s.f./unit unit	3,808 s.f./
Lot Width (minimum)	95 ft.	613 ft.
Lot Frontage	95 ft.	613 ft.
Green Area	35%	+56%

	Code Requirement	**Provided**
Lot Coverage	30% max.	16%
Front Yard Dept.	30 ft.	30 ft.
Side Yard/Rear Yard	10/30 ft. min.	30 ft.
Parking	144	148
Rear Setback	30 ft.	50 ft.
Distance Between Buildings	15 ft.	30 ft.

RECOMMENDATION

File P-6-96-SP is recommended for APPROVAL with the following stipulations:

1. The site will be developed and the buildings constructed in substantial conformity with the plans, drawings, elevations and specifications as contained in Planning Commission File P-6-96-SP.

2. The units shall be faced with brick on the first floor all four sides. The brick is to be red or traditional colonial color as per the samples submitted to the Planning Commission.

3. The upper level rear windows of buildings Types B and C are to be fitted with shutters.

4. Dumpster locations shall be out of the building setback area and screened with 5 ft. high batten board or brick fencing and gates.

5. All parking areas and drives shall be paved to City of Cuyahoga Falls Department of Engineering standards and bounded by 6" x 18" concrete curb or combination curb and raised walk.

6. All building and garage downspouts shall be tied directly into the on-site underground storm sewer system with dean-out connections provided.

7. Developer to pay a $500 site inspection fee to the City Engineer for site inspection services and to submit all site improvements to the City Engineer to insure conformity to City of Cuyahoga Falls Department of Engineering standards.

8. Prior to the issuance of a building permit for construction, a building permit shall be taken out for the construction of a fence at the rear of the property and the following shall be accomplished prior to the issuance of any further permits or the commencement of other construction activities on the site.

a. The rear of the site is to be graded to create a mound or rise the top is of which to be on or within six inches of the property line and run along the entire property line from east to west between the subject property and the property to the south.

b. Beginning at the top of the mound, the property is then to be graded downward toward the north to a point where the finished floor elevation of the southern-most buildings (50 it. north of property

line) is a minimum of five feet below the grade of the top of the mound.

c. At the top of the mound, no farther than six inches from the property line, the developer will erect a brick pilaster/cedar batten board fence. The pilasters will be 20 inches square, six feet high, made of the same brick as the buildings and spaced on ten foot centers. The fencing shall be a reverse batten of one by six inch, five foot high cedar boards applied between the pilasters with no voids.

d. After erection of the fence, the disturbed area will be restored, covered with top soil, planted with grass and covered with straw. The affected area will then be covered with a nylon or biodegradable mesh pinned so as to hold the grass and straw in place until the grass is successfully established. The area to be restored as per the above described procedure will be at least the first thirty feet of the slope northward from the southerly property line.

9. To secure the completion of the site, restoration and landscape improvements required by the approval of the site plan, the applicant shall, post with the Department of Industrial and Community Development a cash bond in the amount of Five Thousand Dollars ($5,000).

All lawn area shall be restored as per Item 8d and all landscaping shall be in accordance with the landscape plan included with the building permit application as approved by the Planning Division

Upon the completion of the improvements required by this approval, the cash bond shall be returned to the applicant. However, in the event the applicant fails to complete the required improvements in the time allotted by law, the cash bond shall be forfeited to the City and the City may use said bond to complete the required improvements.

/s/ _____

Louis F. Sharpe

* Note

Buckeye Community Three Limited Partnership is the developer and general partner in the development of Pleasant Meadow Village. The project will utilize a unique financing arrangement that offers tax credits provided for in the Federal Tax Reform Effort of 1986 and made permanent by the U.S. Congress in 1993. The tax credits known as Low Income Housing Tax Credits (LIHTC) are allocated to states on a $1.25 per capita basis per annum and provide an indirect subsidy to developer's who guarantee occupancy of the finished units will be available only to families whose income is 50% of the Area Median Gross Income (AMGI) adjusted for family size ($20,650 for a family of

four in Summit County) and that the rents will be no more than 30% of the AMGI adjusted for family size ($357 - 2 BR, $451 - 3BR including water, sewer and trash pickup) after deduction of a utility allowance of $62 and $86 respectively.

The tax credits are allocated and administered in Ohio by the State of Ohio Housing Finance Agency through its subsidiary, the "Ohio Capital Corp.", an independent, nonprofit company whose mission is "to cause the construction of affordable housing." The tax credit available is determined by the eligible development cost basis and the fraction of the project units set aside to the income/rent subsidy. The tax credit for new construction at 100% set aside is generally in the 70% of total project cash range and is taken over a ten year period.

The AMGI is calculated annually by the U.S. Department of Housing and Urban Development. Once selected, a tenant's income is not restricted and may rise to 140% of AMGI before a family/unit would become ineligible for the credit allocation.

See the attached ULI November 1995 article for more detail.

Cuyahoga Falls Planning Commission
Staff Summary

Utilizing the tax credit allocation funding for this project is as follows:

Source	Amount	Term	% of Total
1st Mortgage Loan (bank)	$1,655,000	9.5%/ 20 years (30 yr. amort.)	40.13%
State of Ohio (HOME & other funds) loaned by county to partnership	$300,000	8.5%/ 20 years/ deferred pmt.	7.27%
Summit County HOME & Trust Fund loaned to partnership	$325,000	8.5%/ 20 years/ deferred pmt.	7.88%
Ohio Equity Fund for Housing V	$1,844,090	Equity investment	44.72%
TOTAL	$4,124,090		

CUYAHOGA FALLS
PLANNING COMMISSION
WEDNESDAY, FEBRUARY 21, 1996
MINUTES

On Wednesday, February 21, 1996, a meeting of the Cuyahoga Falls Planning Commission was held in City Council Chambers, The Municipal Building, 2310 Second Street, Cuyahoga Falls, Ohio, at 5:30 p.m. in accordance with Chapter 107 of the Codified Ordinances of the City of Cuyahoga Falls.

MEMBERS PRESENT: Jeff Stroup, Chairman
Joe House, Secretary
Kathy Hummel
Dennis Sykes

MEMBERS ABSENT: Janna Amole, Vice Chairman

DEPT OF COMM. DEV.: Louis F. Sharpe, Planning Director
Denise Bell, Administrative Specialist
R. Benjamin Norval, Director of Community Development
Peter M. Korycan, Senior Planner
Maryanne Zarlengo, Human Resources Coordinator

The meeting was called to order at 5:36 p.m. by Chairman Stroup and the agenda was read by Secretary House. Chairman Stroup explained the order of business and how the meeting would be conducted. The first item of business was:

File P-6-96-SP: SITE PLAN REVIEW - Request to construct 72 apt. units in eleven buildings on 6.29 acres of land at a density of 11.44 units per acre on the south side of Pleasant Meadow Blvd. Located in an R-17 Medium Density Multiple Family Zoning District. Buckeye Community Three Ltd. Partnership, owner. D. E. Weatherby & Assoc., Inc., agt.

Mr. Sharpe presented the staff report, he reviewed the plan by describing the location and the project layout. Mr. Sharpe explained the property had been for sale by Ravenna Savings Bank for several years. Mr. Sharpe gave some history of the property's zoning in that prior to the merger, it was zoned for multi-family and upon merger the R-3 Pre-merger classification became R-17 Medium Density Multiple Family zoning. In December 1989, the site was approved for 92 townhouse units but was never completed. It was sold in 1995 to the applicant of the project. The applicant submitted a proposal for 72 apartment units in an R-17 Zoning District at a density of 11.44 units per acre with 148 parking spaces. Mr. Sharpe described the fence as a 5 ft. high batten board fence with brick pilasters (6 ft. high) to be placed along

the rear property line with assorted deciduous and evergreen trees planted in the yard, it would be built along the rear property line prior to building permits being issued for the apartment units. Mr. Sharpe reviewed the zoning in the area along with the code requirements for the site. Mr. Sharpe concluded his report recommending approval of the site plan citing 9 stipulations as contained in the file.

Steve Boone, President of Buckeye Community Health Foundation, explained they are a 501c3 corporation out of Columbus, they are looking to build affordable units for working people called a "tax credit project". Mr. Boone explained the rent structure and the utilities that must be paid. Mr. Boone added that a market study showed the rent to be high in this area and there is a need for affordable housing. In conclusion, Mr. Boone introduced Doug Weatherby, the architect for the project.

George Potts, Ward 8, said concerned has been expressed by residents on the northern cul-de-sac of Prescott Green because there was a conflict in the boundary between the north line of the condo project and the south line of the proposed project. The residents are concerned because they were not notified, there are two different types of lifestyles, theirs being more of a retirement lifestyle. The lifestyle of the people for the project leads to transient tenants. The fence is not enough to deter any problems or provide protection. This project receiving a substantial subsidized housing tax credit. Mr. Potts mentioned the AMHA, Section 8, and other subsidized projects in the

city; Mr. Potts asked how the tax credits worked. Mr. Boone said this project is not a Section 8 and financial institutions such as Fannie Mae, Freddie Mac, Banc One, National City Bank, etc. buy the tax credits as investors. Mr. Potts concluded his comments said the zoning characteristics of the area have changed with the R-8 zoning and maybe the surrounding zoning should be changed.

Mr. Stroup read the Chapter 1144 of the Zoning Code to the public so would know what the Commission must do. *"1144.04 PLANNING COMMISSION CONSIDERATION: The Commission shall consider the location of buildings, parking areas and other features with respect to the topography of the lot and existing natural features such as streams and large trees; the efficiency, adequacy, and safety of the proposed layout of internal streets and driveways; the location of the green area provided, bearing in mind the possible effects of irregularly shaped lots; the adequacy, location, landscaping and screening of the parking lots; and such other matters as the Commission may find to have a material bearing upon the stated standards and objectives of the various District Regulations."*

Mr. Stroup discussed the way financing is obtained for a project of this nature in that Congress set up a tax credit program and individual investors can purchase the tax credits. Mr. Stroup opened the file for discussion:

Bill Suren, 388 Village Court, asked how long the applicant had been in business and their success ratio. Mr. Boone replied they had been in business 15 years.

The tax credit program was approved in 1986, they have been developing tax credit properties since 1993, this is the 4th tax credit project. The other projects are in Troy, Heath and New Concord. Mr. Suren asked how they find this location. Mr. Boone said a realtor called him.

Paul Lint, 3520 E. Prescott Circle, said he was concerned about the impact on his property value and how this project will influence a sale. Mr. Sharpe said he is not aware of any property in Cuyahoga Falls depreciating, there is a great deal of diversity in housing in the Falls. Mr. Sharpe said *"value is in the eye of the beholder"* and also a *"sense of self-worth in the community"*. He is not aware of any devaluation.

John Thompson, 3503 E. Prescott Circle said the density was inconsistent with the density in the surrounding area, he did not feel the "performance bond" was sufficient for construction and maintenance of the barrier separating their properties from "this sardine can" of 72 units for 6 acres.

Nancy DeSalvador, 3510 Wyoga Lake Road, said no one mentions a barrier for their property on the east.

Joyce Harrington, 3600 Wyoga Lake Road, said there is too much active development in Cuyahoga Falls, there is an impact on the sewer system and what's the impact on the school system. There has been no increase in service or safety forces such as more firemen and policemen.

Lee Minier, 3404 E. Prescott Circle, said that if this development had been in place 5 years ago, a lot of the

people sitting here would not have bought their condos, they are concerned about safety and real estate devaluation. *"They know what kind of element is going to move in there, just like you have on Prange Drive."*

Gerry Pribonic, 3485 E. Prescott Circle, said the fence will be 30 feet from her foundation. There are a lot of widows in the development. People can go around the fence, there will be a different class of people living there.

Harry Bridges, 3493 E. Prescott Circle, said it is the general opinion of the people they are concerned about security, people walk around Prescott Green and Prescott Commons any hour of the day or night. Mr. Stroup reminded everyone the discussion was not about who was going to live there and there was a misconception of what this project is compared to Prange Drive, they are not the same type of project and cannot be compared.

Dick Clapp, Woodridge Supt., said they are concerned from a planning perspective due to the density of the housing. Their enrollment projections did not include a density of this nature for this area. Dr. Clapp asked if the 501c3 corporation will be maintaining ownership and if they are allowed to establish requirements of tenancy? Mr. Boone answered they have a stringent application process, federal law prohibits them from discriminating but if they don't have a job, they can't afford to pay the rent, utilities, food, etc. They do check references and previous addresses. Dr. Clapp asked if the project goes

forward, that the management encourage the residents to be involved in their children's education.

Don Whitely, 3477 E. Prescott Circle, asked how the engineering will be done to control the water and drainage. Mr. Sharpe answered that the current mound or grade is there and it is steeper and longer and extends 40 feet onto this property. Mr. Sharpe suggested if the current drainage is not sufficient, it is an issue for you (Mr. Whitely) to take up with your developer. Mr. Whitely asked about the density which Mr. Sharpe explained.

Frank Pribonic, 3485 E. Prescott Circle, asked what if a tenant loses their job. Mr. Boone said the tenant will have a lease, if they cannot pay the rent, they will be in violation of the lease and can be evicted but if they are able to pay the rent, the company cannot break the lease. Mr. Pribonic asked how much tax revenue the city will recognize for the development and asked for property tax information to compare to his. Mr. Sharpe said it would be the same millage. Mr. Pribonic said he wanted to see it in writing. Mr. Pribonic commented about Whitlatch Company and the landscaping mound. Dave Wager of Whitlatch Company responded that the landscaping was mis-installed by the landscaping company and would be corrected.

Tim Mier, 3565 Wyoga Lake Road, asked where Mr. Boone's office was located, Mr. Boone answered Gahanna, Ohio. Mr. Mier then stated his concern about the increased burden on the safety forces versus the amount of property and income taxes that will be

realized.

Lee Minier, 3404 E. Prescott Circle, asked if 2 entrances would be needed for safety protection. Mrs. Hummel replied there are 2 entrances on Pleasant Meadow Boulevard. Mr. Minier asked if Pleasant Meadow would be opened up to be a through street. Mr. Sharpe replied no.

Joyce Harrington, 3600 Wyoga Lake Road, commented that the traffic on Wyoga Lake Road is already very heavy and difficult to exit the drive way and asked if the property owners would have to pay school taxes. (Tape Change) The answer was yes, they are non-profit but not exempt from paying property taxes.

Dave Wager, Whitlatch & Co., asked if there would be an on-site manager. Mr. Boone answered there would be a resident manager plus there will be staff members from Columbus making sure the manager is performing their job properly.

Bill Suren, 388 Village Court, asked what their options are to reverse the plan, Mr. Stroup said they were looking at the file based on the merits, if approve it goes to City Council and it will be up to Council to approve or not to approve. If the owner or the city want to propose a change of zoning for the property, it can be considered. Mr. Suren asked who they had to deal with to accomplish this. Mr. Sharpe said the file is before the Planning Commission because the property is properly zoned, an individual filed an application to build something permitted in the zoning

district; who the person is and where he is getting his money is not regulated in the zoning code. Mr. Sharpe continued by saying *"what rent is charged or how it is subsidized"* would be illegal to regulate in the zoning code. Mr. Sharpe stated the residents can make their concerns known to City Council. Mr. Suren asked if an injunction could be obtained to stop this action. Mr. Sharpe said not at this time because the city is going through an administrative process. The property owner is trying to exercise his rights. Mr. Suren said someone was remiss in not notifying the public of the project and asked where that responsibility lies. Mr. Stroup said this site plan is being handled in the proper manner. Mr. Sharpe said there is no public notification on a site plan review.

Shirley Matuska, 3530 E. Prescott Circle, asked who decides Cuyahoga Falls needs this project and why was the project stopped in 1989 for the 92 townhouse units. Mr. Sharpe said the company went bankrupt that received approval for the 92 units.

Joyce Suren, 388 Village Court, asked if someone could have built high-end apartments on the site, Mr. Sharpe responded saying that is what was anticipated but Ravenna Savings had a price that most builders felt was out of line.

Karen Hayes, 3364 Hunter Parkway, asked if the maximum income was $26,000. Mr. Boone answered it was correct for a family of 4. Ms. Hayes stated then *"once they're in, they can go on public assistance."* Mr. Boone said they will have a lease, they would have to do something to break the lease before they can be

evicted such as not pay the rent.

Larry Hart, 3479 E. Prescott Circle, asked what would happen when Buckeye sells the property and someone else comes in with less stringent requirements, Mr. Boone replied they have a 30 year commitment to keep the property.

Karen Hayes, 3364 Hunter Parkway, said her question was not answered in that what happens if they go on public assistance, Mr. Boone answered they have to pay the rent, if they do not or they violate the lease in some other manner, they can be evicted. At this point, Ms. Hayes and others made references to Prange Dr. Mr. Sharpe asked Mr. Boone if a tenant could remain there if their income goes up, Mr. Boone said 115%. Mr. Sharpe said *"so they are encouraged to continue to increase income from $26,000 for a family of 4 to over $50,000."* Mr. Boone replied that statement was correct.

Richard Krausman, 3422 Wyoga Lake Road, said *"Are your little kids going to shut up right at sunset? Are your lights going to go down at sunset? We got dark out there not light, it's dark at night, no noise. I don't want light."*

Lee Minier asked if people making over $26,000 can move in, Mr. Boone said if the family is larger, they can move in. Mr. Minier said it was discriminatory. Mr. Stroup explained that the IRS set the requirement.

Susan Brady, 377 Village Court, said she does not believe the area will be safe, she walks with a very big dog, and believe Cuyahoga Falls is downgrading itself.

Dr. Clapp commented perhaps the cities of Troy and Heath can share information on those complexes for the 2 years they have been in those cities. Mr. Stroup again said the Planning Commission can't look at who is going to live there and how much money they make. Mr. Sharpe said he talked to people in Troy and the project was controversial due to the relationships with the financing. The company built what they said they were going to build, there is management on site and his contact in Troy did not have any negative comments other than it was a difficult approval process. It was similar to this project as they had land properly zoned and they followed the legal process to reach fruition. Mr. Sharpe added there are approximately 21,000 households in Cuyahoga Falls, the median income in the 1990 census is $30,885. Therefore, if the median income was $30,885, well over 40% of the households in Cuyahoga Falls might qualify to live in this development.

Sandy Rubino, Council-at-Large, said he has heard their concerns. Mr. Rubino asked if the city has a plan for fire protection in this area and which station would service it. Mr. Sharpe said he did not know which station would respond, the Fire Department was routed on the plan and did not forward any negative comments. There is adequate public water supply at the fire hydrants on the street and the water line will be looped through the development. Mr. Rubino asked the city would be getting income taxes from the developer since it is a 501c3. Mr. Boone said the partnership is not, it is a for-profit partnership so if there is income, taxes will be paid to Cuyahoga Falls.

Mr. Rubino asked is this foundation was backed by a church organization, Mr. Boone replied it was not. Mr. Rubino asked Mr. Boone what drew their corporation to this particular area since it is not consistent with the surrounding area. Mr. Boone responded they thought it was consistent.

Jerry Leipply, 3534 E. Prescott Circle and Council-at-Large, said many of his concerns have already been shared by Mr. Potts and stated to the public that the 4 members of council directly responsible to them are present to try and understand what is happening.

Mr. Potts told the public the legislation will be introduced Monday, February 26 (if approved at Planning Commission) and a public hearing before the Planning & Zoning Committee will be held on March 4th with Kathy Hummel as the chairman.

Constance Jenkins, 3474 E. Prescott Circle, said she concurs with her neighbors and shares their concerns but the Commission should give more concern about zoning and density where the school district is concerned.

Miriam Krausman, 3422 Wyoga Lake Road, asked what school district this development would be in. Several people answered Woodridge.

Ann Huston, 3491 E. Prescott Circle, asked Mr. Boone what the amount of resistance was faced in the other communities, Mr. Boone responded about 15%. Mrs. Huston asked if there were any more in process, Mr. Boone answered Sidney and Lorain; there was no resistance in Sidney and they have not reached the

hearing point in Lorain. Mrs. Huston asked if there were any communities where they had not received approval. Mr. Boone said no.

Larry Hart, 3479 E. Prescott Circle, asked Mr. Boone if the people of Gahanna would resist a project of this nature. Mr. Boone said there are 2 or 3 along Rt. 270.

Joyce Suren, 388 Village Court, asked what it will look like in 5 years; Mr. Boone said it all depends on how well it is run. Mr. Boone added he thinks people would be impressed to see some of his complexes that he has managed since 1978.

Martha Schultz, 3489 E. Prescott Circle, asked if there are any other restrictions other than the amount of money they make, can more than 1 family live in 1 apartment. Mr. Boone said they do have other restrictions and only 1 family can live in an apartment.

Lee Minier asked if there was any specific performance as far as maintenance is concerned, does a bond have to be posted? Mr. Stroup said they have to be maintained in order for the investors to keep their tax credits. Mr. Sharpe said the city has a housing code that says the property must be maintained to a certain standard.

Dick Schultz, 3489 E. Prescott Circle, asked if the trade workers will have to post a bond, Mr. Boone said the general contractor will post the bond.

Don Whitely, 3477 E. Prescott Circle, asked if the residents can rezone the property. Mr. Sharpe said

they can petition council or the Planning Commission, it gets complicated because the residents are not the property owner but it would not affect this property in that an application has already been filed under the current zoning.

Gerry Pribonic, 3485 E. Prescott Circle, said they were the ones that asked for the fence to be built first and asked the commission to understand how they feel.

Unidentified man asked if one of long apartment units could be moved away from their property line to another location and a smaller unit put in its place. Mr. Boone said he would look at that.

Unidentified lady asked what the qualifications of the resident managers would be and if they meet the income qualifications. Mr. Boone said the company trains them in property management and sometimes they meet the income qualifications but they don't have to.

Frank Pribonic, 3485 E. Prescott Circle, asked if there is a restriction on pets. Mr. Boone said no pets are allowed. Mr. Pribonic asked if a fence could be placed along another property line. Mr. Sharpe said there is no zoning requirement to buffer property from the same zoning classification.

Mr. Potts asked if the developer would have a cash flow with the rent structure, Mr. Boone said there would be due to their financing package.

Bill Suren asked if there was any option on the height of the fence. Mr. Sharpe said it will be 5 feet because a residential atmosphere is being created not industrial or institutional.

Mr. Stroup closed discussion to the public, called for a 5 minute recess and upon reconvening opened the file to the commission members.

Mrs. Hummel said she does not recall any project where there was this much scrutiny on the site plan and has never seen a requirement for a developer to put up a fence prior to starting construction, the most required has been a mound but not a mound and a fence. The configuration for the parking to be turned to the interior of the project is good and the detail addressed for the exterior of the building, she has seen samples of brick before but never samples of siding or shingles. There has been extensive attention to detail for this project and she was in favor of the project.

Mr. Sykes did not have any further questions or comments.

Mr. House said he concurred with Mrs. Hummel regarding the detail and the fence but asked where the residents will be putting their trash. Mr. Boone said their trash is to be placed directly in the trash receptacles or kept in the apartment. Mr. House asked if the width of parking spaces meets the federal requirements for handicapped persons. Mr. Weatherby said they do. Mr. House asked when the units would be in service if they receive council approval. Mr. Boone said they anticipate having the

first units ready for occupancy in the Fall of 1996. Mr. House concluded his comments saying on the basis of the zoning code, he will vote in favor of the file; the organization appears to have a good track record in maintaining their properties and it is not low income housing, it is a chance for people to get ahead.

Mr. Stroup said he concurs with Mrs. Hummel and Mr. House. The commission has every obligation to approve the plan per the zoning code as it exceeds the requirements, it is attractive and will be a definite addition to housing diversity. There is a large difference between this project and Prange Drive. The property must be maintained in order to keep its tax credits. Mr. Stroup said he knows many people who would meet the criteria for this development and he hopes Council looks at the merits of the project.

Mrs. Hummel asked Mr. Sharpe what sewer this would tie into. Mr. Sharpe answered directly into Mud Brook on county lines presently in Pleasant Meadow Boulevard no more than 300 ft. to the Mud Brook Trunk. Mrs. Hummel asked if the county was aware of the project, Mr. Sharpe said the plans will have to be approved by the Department of Environmental Services but there is no reason to believe they will not be approved.

Mrs Hummel made a motion to APPROVE File P-6-96-SP with the 6 conditions contained in the file, second by Mr. House. The vote: All yea (4-0). Motion carried. *(At the July 16, 1996 Planning Commission meeting, these Minutes were amended to correctly reflect the Motion Sheet contained in the file, there were 9*

conditions approved. The motion was made by Kathy Hummel, seconded by Joe House. The vote: All Yea.)

File P-7-96-T: TEXT CHANGE - Amending the Zoning Regulations by deletion and substitution of Chapter 1181 Amendments, Section 1181.08 Fees, Subsection 1181.08a1) by addition of fee for PORT zoning.

Mr. Sharpe explained the reason for the text change was that after the PORT District was created, it was not added to the fee schedule. It was a matter of housekeeping.

The members did not have any questions or comments.

Mr. House made a motion to APPROVE File P-7-96-T, second by Mrs. Hummel. The vote: All Yea (4-0). Motion carried.

File P-8-96-T: TEXT CHANGE - Amending the Zoning Regulations by deletion and substitution of Chapter 1132 C-N, Subsection 1132.02a) Permitted Uses and Chapter 1133 C-G, Subsection 1133.02a) Permitted Uses.

Mr. Sharpe explained that presently drive-thrus are not permitted in the C-G and C-N districts. It is the intent to allow limited use drive-thru's for less intense uses such as dry cleaning, pharmacy, video rental, etc. Mr. Sharpe recommended approval.

The members did not have any questions on the proposed changes.

Mrs. Hummel made a motion to APPROVE File P-8-96-T, second by Mr. House. The vote: All Yea (4-0). Motion carried.

Mr. House made a motion to APPROVE the Minutes of February 6, 1996, second by Mrs. Hummel. The vote: All Yea (4-0). Motion carried.

With no other business to bring before the Planning Commission, the meeting adjourned at 7:45 p.m.

JS/dab

[The Following Affidavit with Attachments Appears as an Attachment to the City's Initial Motion for Summary Judgment in the District Court Record at Document No. 32]

AFFIDAVIT OF GERALD DZURILLA

I, Gerald Dzurilla, being first duly sworn and cautioned, do hereby state as follows:

1. I have personal knowledge of the matters contained herein.

2. I am, and have been at all times relevant hereto, the City Engineer for the City of Cuyahoga Falls. My duties as City Engineer include the review, approval and/or denial of requests for building permits.

3. In April, 1996, a request for building permits for the construction of a 72 unit apartment complex on Pleasant Meadow Blvd. was filed with the City of Cuyahoga Falls. The site plan for this project had been approved by City Council in Ordinance 48-1996.

4. I sought advice from the City's Law Director, Geoffrey Kennedy, as to my authority to issue building permits for the Pleasant Meadow Blvd. apartment complex in light of a referendum petition that had been filed April 29, 1996, seeking to place Ordinance 48-1996 on the November, 1996, ballot.

5. On April 30, 1996, I received a memorandum from Mr. Kennedy in response to my request. Attached hereto as Exhibit A is a true and accurate copy of the memorandum I received from Mr. Kennedy. Since receiving this memorandum, I have

not issued building permits for the construction of the Pleasant Meadow Blvd. apartment complex with the exception of a permit to construct a fence which was issued in April, 1996. An approved site plan is not necessary for the issuance of a permit to build a fence. My actions have been based on the legal advice I received from Mr. Kennedy and have been free of any discriminatory motivation on my part.

6. On May 1, 1996, I received a memorandum from Service Director, Barbara Sculley. Attached hereto as Exhibit B is a true and accurate copy of the memorandum I received from Ms. Sculley. Because I had already received legal advice from Mr. Kennedy, and since Ms. Sculley's memorandum was not inconsistent with Mr. Kennedy's advice, Ms. Sculley's memorandum had no effect on my actions with respect to this project.

7. At no time did Mayor Don L. Robart have any discussion with me concerning the issuance of building permits for the Pleasant Meadow apartment complex.

FURTHER AFFIANT SAYETH NAUGHT

s/ _____
Gerald Dzurilla

The foregoing was sworn to and subscribed in my presence by Gerald Dzurilla this 10th day of October, 1996.

/s/ _____
Barbara E.R. Bailey
Notary Public

My commission has no expiration date.

LAW DEPARTMENT INTER OFFICE MEMO

To:	Gerald Dzurilla, City Engineer
From:	Geoffrey W. Kennedy
Subject:	Referendum
Date:	April 30, 1996

Please be advised that referendum petitions were filed yesterday with the Clerk of Council on Ordinance 48-1996. (Copy Attached). As a result of the filing of these petitions, the sufficiency of which is currently being ascertained by the Clerk, Ordinance 48-1996 does not take effect. Accordingly, any permits for work authorized by Ordinance 48-1996 must be held in abeyance until the efficacy of that ordinance is determined.

Affidavit of Gerald Dzurilla

The City of Cuyahoga Falls, Ohio
Director of Public Service, Barbara L. Sculley

To: All Service Departments

From: Barbara L. Sculley

Date: May 1, 1996

Subject: Proposed 72 Unit Apartment Complex - Pleasant Meadow Lane

Please be aware that no permits for construction should be issued on the subject project without my authority.

Due to the pending litigation and petition process, it is important that I be made aware of any such requests, should they occur.

/s/ _____

Barbara L. Sculley

Director of Public Service

/lms

cc: Don L. Robart, Mayor

[The Following Appears as an Exhibit In The District Court Record at Document No. 33]

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

[May 15, 1996]

Case No. CV96-05-1701
C.A. No 17933

BUCKEYE COMMUNITY HOPE FOUNDATION, et al.,
Plaintiffs,

v.

CITY OF CUYAHOGA FALLS, et al.,
Defendants.

TRANSCRIPT OF PROCEEDINGS

VOLUME I OF I

BE IT REMEMBERED that upon the hearing of the above-entitled matter in the Court of Common Pleas', Summit County, Ohio, before the Honorable James E. Murphy, Judge Presiding, and commencing on Wednesday, May 15, 1996, the following proceedings were had:

MARGARET G. WELLEMEYER, RMR
Official Court Reporter
Summit County Courthouse
Akron, Ohio 44308

[P. 13] **JOSEPH JAMES OREL**

a witness herein called on behalf of the Plaintiffs, being first duly sworn as provided by law, was examined and testified as follows:

- - -

THE WITNESS: I do.

THE COURT: All right.

- - -

DIRECT EXAMINATION

BY MR. KRAMER:

Q. Would you state your full name for the record.

A. Joseph James Orel, O-r-e-l.

Q. And can you tell me if you're employed at this time?

A. Yes, I am.

Q. And where are you employed?

A. I'm employed by JJO Construction.

Q. And how long have you been employed by that particular company?

A. Three and a half years.

Q. And can you tell me what your duties are?

A. I'm the president.

Q. And what does that company do?

[P. 14]

A. We're a general contracting firm, put up - -we put up -- we build buildings.

Q. And as president are you familiar with the development of a construction schedule?

A. Yes, I am.

Q. What is a construction schedule?

A. Construction schedule projects the time, length of time it would take to start and finish a project, bring in all the variables.

Q. Can you tell me whether or not you were aware of property that's located at the 300 block of Pleasant Meadow Boulevard in the City of Cuyahoga Falls?

A. Yes, I am.

Q. How are you familiar with that?

A. We're acting as agent for the Slane Company to put up the apartment complex.

Q. And can you tell me, have you developed a rough construction schedule for that building?

A. Yes, we have.

Q. How long would that building take based on your schedule?

A. Based on our schedule, for all the site work and the 12 buildings that are involved in [P.15] this project, we are looking at around 11 to 12

months to complete the project in its entirety.

Q. And what did you base the -- excuse me, withdraw that.

At what time period do you believe, based on your schedule, would you begin construction on that site?

A. When would we?

Q. Yes, based on your schedule.

A. Based on our schedule, we've got -- as soon as possible. I don't understand the question.

Q. Okay. What if you did not begin until after the November 1996 elections, do any construction work?

A. We wouldn't be able to even start the project until the spring of 1997 because of the winter. We couldn't get any of our site work or foundation work in because of the inclement weather.

Q. And would that delay your schedule past 1997 then?

A. Oh, absolutely.

MR. KRAMER: I don't have [P. 16] anything further.

MR. ARRINGTON: I have no questions.

THE COURT: Mr. Arrington.

MR. ARRINGTON: I have no questions, Your

Honor.

THE COURT: MR. SCHULTZ

MR. SCHULTZ: No questions, Your Honor.

THE COURT: Thank you very much, Mr. Orel.

(Witness excused.)

MR. KRAMER: Your Honor, we call as our last witness Roy Lowenstein.

- - -

[P. 17] **ROY LOWENSTEIN**

a witness herein called on behalf of the Plaintiffs, being first duly sworn as provided by law, was examined and testified as follows:

- - -

THE WITNESS: I do.

THE COURT: Please have a set, sir, and pull that microphone down to you.

- - -

DIRECT EXAMINATION

BY MR. KRAMER:

Q. Would you state your full name for the record.

A. Roy Lowenstein.

Q. And where do you reside?

A. I reside at 748 Sheridan Avenue, Columbus, Ohio.

Q. And are you presently employed?

A. Yes, I am.

Q. At what company?

A. I'm employed with Ohio Capital Corporation for Housing.

Q. And what is that company?

A. Ohio Capital Corporation is a nonprofit [P. 18] company that helps put together affordable housing developments, and we also administer a -- an equity fund that invests in affordable projects through the low income housing tax credit.

Q. Can you explain what the low income housing tax credit program is?

A. Yes, sir. The tax credit program, which has been around about ten years, is a program whereby the Internal Revenue Service acknowledges tax credits to taxpayers, typically large corporations and banks, who invest in affordable housing developments that meet certain criteria, and in that program, the investors get to take a tax credit off their taxes if they invest their money according to rules that the Internal Revenue Service has laid out. So the program involves investment from the

private sector in affordable housing.

Q. Are you familiar with the low income tax credit program?

A. Yes, sir.

Q. And how are you familiar with that?

A. Well, that's the main part of nut company's [P. 19] work, and so we're pretty familiar with it according to the Internal Revenue code and the programs - -

Q. And how long -- I'm sorry.

And how long have you been employed by this particular company?

A. I've been employed a little more than two and a half years there.

Q. Have you had any involvement or the Ohio Capital Corporation foe Housing been involved in the property that's located at the 300 block of Pleasant Meadow Boulevard in the City of Cuyahoga Falls?

A. We've been involved in two ways. In addition to investing in these properties on behalf of the investors in the fund, we also are housing consultants, so we help put together the other pieces of the financing that's required. These are very complicated endeavors, and so we -- we were involved in putting together a grant application to the Ohio Department of Development as well as applications to Summit

County for local funds. And we also help with liaison work to National City Bank which is proposing to [P. 20] provide construction a permanent loan, so we're pretty involved in that as well as already having taken this particular project to the Ohio Equity Funds Board for an investment decision and which they did in fact vote to invest in this project. So those are kind of a -- different involvements we've had up to this point.

Q. If the plaintiffs are delayed from starting construction till after the November election, what impact, if any, would that have on any grants that you've obtained for this property?

A. Well, there is always the potential for extensions, but they're very uncertain. As far as on the grant side, we're talking about there are obligations of the developer to move forward in a timely manner with the project from -- and that would be true with the Ohio Department of Development Grant, which has been approved for the project.

Also, the local grant funding for the project was very time sensitive and, you know, Fight now, that is only available until some point, I think, this summer, after which [P. 21] it may very well be lost altogether.

Q. Do you know what the amounts of the grants are for the Ohio Department of Development and the Summit County housing - -

A. Yes. The state has the Ohio Department grant, is $300,000, and there's a total of $325,000 available from two local sources: that being Summit County, which administers funding directly from Washington in the so-called Home Program, and then there's money available included within that 325,000 from the Summit County Housing Trust Fund that's locally generated.

But the problem for both the state and the county is that they have to use their home funds or lose them, and so the risk is there that if they can't use them in a timely fashion, they will need to reallocate those funds to other developments in order to avoid losing them.

Q. Now, If these grants were lost by the plaintiffs in this case, would they be able to construct the 72 units of housing on this particular property?

MR. ARRINGTON: Object.

[P. 22]

A. We don't see how.

MR. ARRINGTON: Objection. That deals with the plaintiff's financial status and he's not qualified to speak about that.

MR. KRAMER: I'll establish – I'll withdraw it, Your Honor, establish a foundation.

THE COURT: Foundation.

BY MR. KRAMER:

Q. All right. Have you as part of the Ohio Capital Corporation for Housing reviewed the financial status of the plaintiffs in this case, including Buckeye Community Hope Foundation?

A. Yes. "We're very familiar with the financial status of Buckeye. We've done other developments with the same developer. This would be the third development that we would be investing in, and one was recently completed. And so we see financial statements, we require for purposes of investment that we review financial statements of the developers. While they do have some resources, there is no way based on those financial statements they could replace [P. 23] four or $500,000 of grant funds from the state and have the ability to develop the project.

I would also say that we are intimately involved with helping to create the development budget and the operating pro forma for all the projects. That's part of our underwriting function both as housing consultant and also as the investor in the project. That's called due diligence. And so we assist the developer in creating those budgets that we're very, very familiar with them.

Q. We talked about the grants. With regards to the same question, if the plaintiffs are delayed until after the November election, what impact, if

any, would it have on the low income tax credits that have been allocated to the particular property In Cuyahoga Falls?

A. Well, there are two ways that it's -- that the tax credit program is sensitive to time. First of all, there's an absolute deadline. In Section 42 of the Internal Revenue code, it makes it clear that all buildings, if they are ever going to receive tax credits, they [P. 24] must be placed in service within two years after the end of the calendar year in which the tax credits were originally allocated.

These tax credits were allocated in 1995, so two years from the end of 1995, or December 31, 1997, all of the housing units, all of the buildings on this project must be placed in service or else they will never get tax credits.

Placed in service means that they received -- that they received approval from the local Jurisdiction, often referred to as a certificate of occupancy, so that is an absolute deadline. So, for example, if half of the buildings were not completed by that date and placed in service, half of the tax credits for the project would be forever lost.

The other way in which the program is time sensitive is that the tax credits are worthless as time goes by to our investors. That concept is generally referred to as a credit adjuster, a credit adjuster for every month that

the tax credits are delivered to the investor, sold to the investors, and that [P. 25] can only happen after a building is fully leased up to eligible tenants. At that point that's when the credits actually vest for the investors, and so –

THE COURT: That has nothing to do with tile development corporation, though. It's their own personal tax credit, right?

THE WITNESS: Except that we will -- we have in every one of our partnership agreements, by which we make the commitment to invest in the project, we have a credit adjuster provision which reduces 80 cents on the dollar for delay. I'll explain that just if you bear with me.

THE COURT: That's to the investor, not to the corporation.

THE WITNESS: It's to the partnership, and it directly affects the developer because if, for example, if there is approximately a $20,000 per month loss in this project to the project partnership, if the units are delivered late -- right now we're calculating that these units would be delivered during 1997, in fact, relatively early in the year So for every month [P. 26] they're late, we will reduce our investment in the project by $20,000 plus or minus. The impact to the developer is that he has no other way of making up those moneys unless he's able to get grant money elsewhere

or it comes out of his developer fee or it comes out of the development corporation's assets to make up that difference because he would have no other way of making that up.

THE COURT: Go ahead, Mr. Kramer.

MR. KRAMER: I have nothing further.

THE COURT: Mr. Arrington.

MR. ARRINGTON: No questions.

THE COURT: Mr. Schultz.

MR. SCHULTZ: No questions, Your Honor.

THE COURT: You indicated there's a potential for extensions on these grants. Tell me about that.

THE WITNESS: I do know that under some circumstances this Department of Development could extend its grant. It's just really unknown whether they would. It [P. 27] would be case by case. And - -

THE COURT : So you don't know?

THE WITNESS: I don't know whether there's any potential, but I would say this. I know that from past experience that tile public agencies will not extend their funds if the project is truly in Jeopardy. We would have to be able to show that the project was still viable, that it still was extremely likely to be developed,

there were good causes for the delays and so forth.

My concern on behalf of the developer here would be that if there was substantial delay in proceeding, the overall viability of the project would be thrown into question by virtue of losing either all of the tax credits or substantial portion of the tax credits, in which case it would be prudent on the part of the public agencies with grant funds to not to grant extensions.

THE COURT: That's their business, to grant extensions.

THE WITNESS: Public agencies, you mean?

[P. 28]

THE COURT: Right, right.

THE WITNESS: They have discretion to do so.

THE COURT: They have power? Mr. Lowenstein, do they have the power?

THE WITNESS: I'm sure they have power to administer their grants, but I would just be cautious about how long that might be realistic.

THE COURT: All right. Thank you very much, Mr. Lowenstein.

(Witness excused.)

THE COURT: Yes, Mr. Kramer.

MR. KRAMER: Your Honor, other than requesting a few minutes in closing, we rest our case for the preliminary injunction.

THE COURT: All right. And you may have those few minutes, as this is not an easy matter.

Go ahead, sir.

MR. KRAMER: Thank you, Your Honor.

THE COURT: I have your memorandum and brief. I also have the reply which you may have by now.

[The Following Appears as an Exhibit In The District Court Record at Document No. 36]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

No. 5:96 CV 1458

BUCKEYE COMMUNITY HOPE FOUNDATION, et al.,
Plaintiffs,

vs.

CITY OF CUYAHOGA FALLS, et al.,
Defendants.

Judge Bell

Deposition of STEVEN J. BOONE, President of Buckey Community Hope Foundation, called by the Defendants for cross-examination, pursuant to the Rules of the United States District Court, taken before me, the undersigned, Elizabeth A. Merritt, a Registered Professional Reporter and Notary Public in and for the State of Ohio, at the United States District Court, 526 U.S. Courthouse & Federal Building, 2 South Main Street, Akron, Ohio, on Monday, the 30th day of September, 1996, at 3:27 o'clock p.m.

[P.17] Fair Housing Act is.

If you're asking me would I believe it is partially as a result of the discrimination, I would say yes.

Q Okay. Do you believe that your right to develop your Project is superior to any right the people may have to feel at peace?

A In this instance, yes, I do.

Q And upon what do you base that belief?

MR. KRAMER: I'll object. I think it calls for a legal conclusion.

But you can answer the question if you understand it and you have an opinion.

A Well, in my opinion, we -- we have, um -- we have met all of your requirements in terms of, you know, the land was zoned by you guys R-17, we met and exceeded -- or exceeded in -- in many instances every single building requirement that you had.

I believe it's ludicrous for the people of Cuyahoga Falls to be voting on a Zoning Code they've never read and a site plan they've never seen. I mean, that's what -- what they're voting on.

By Mr. Arrington:

Q Do you believe --

A If we lose the vote, if you ask what's wrong with [P.18] our site plan, because that's -- I'd say no one could answer that, there's nothing wrong

with it.

Q Do you believe the Referendum process has violated your rights under the Fair Housing Act?

A I'm at -- I'm not entirely certain, again, what comprises the Fair Housing Act. I do believe that the reason we are not allowed to proceed is -- is based upon discrimination, I really believe that.

Q Okay.

A If that's what you're asking me.

Q Do you believe that you're being discriminated against through the Referendum process?

A I believe I am, as well as the potential residents of the -- of the Apartment Community.

Q And do you believe that such discrimination violates the Fair Housing Act?

A It's my belief, um, without -- again, without understanding what comprises the entire Fair Housing Act, I believe if discrimination is something that you're not allowed to do by law, then I believe it does.

Q Okay. Mr. Boone, I'm really not trying to trip you or put words in your mouth, please understand.

A I understand that, I'm trying to help you.

Q I understand that, too, and I appreciate that.

[P.19] In your statements on March 18, 1996, you're the one who made reference to the Fair Housing Act, and you state -- I will just quote from these Minutes -- "The fair housing act 42-US-3601 states that it is a violation of the federal fair housing act for any person including a municipality, to make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin."

Is that a fair summation of the comment you made on March 18?

A Yes, it is.

Q So at that time you understood that the Fair Housing Act made it a violation for any person to discriminate against you on the basis of those items that you indicated, is that true?

A Would you mind repeating that? Okay. On March 18, 1996 -Right.

Q -- was it your understanding that the Fair Housing Act made it unlawful for any person to discriminate against you on the basis of race, color, religion --

A It's unlawful to discriminate against anyone based upon those -- those avenues.

Q And do you believe that the Referendum process in [P.20] this case constitutes discrimination?

MR. KRAMER: Objection, but you can answer.

A I believe it's based upon discrimination. I believe that the reason they're doing it is based upon hate and prejudice, yes, I do.

By Mr. Arrington:

Q And did you believe that on March 18?

A Absolutely.

Q Has anything happened between March 18 and today, being September 30, to cause you to change your belief?

A Not really. I'd say it's just been confirmed more, to be honest.

Q Do you believe that the City's submission of Referendum Petitions to the Board of Elections has constituted discrimination against you, contrary to the Fair Housing Act?

MR. KRAMER: objection, but you can answer.

A The City's submission of the Referendum to the electors?

By Mr. Arrington:

Q No. Let me rephrase the question.

Do you understand that after the Referendum...

[P. 29]

...you just gave me, the statement in Paragraph 34 stating that it would be impossible to build an apartment complex after the Referendum is voted

upon, is that a true statement?

A I would have to say it's not -- I would have to say no, it's not impossible.

Q Do you recall testifying in Judge Murphy's Courtroom on May 15, 1996?

A Yes. Sure do.

Q Okay. Does a part of the financing for your Project come from State Grants?

A Yes, it does.

Q And based on your understanding of those State Grants, do you have to have your Project a percentage complete by the end of 1996?

A Yes, I do.

Q And what percentage completion do you have to have done?

A Based upon the way the system works this year, we would have to have the Project 50 percent complete by the end of 1996 to be eligible to participate in the funding round for 1997.

Q If you began construction after the November election, would you be able to be 50 percent complete by the end of 1996?

[P. 3O]

A No, we would not.

Q And how would that affect you?

A Next year, when we go to apply to do another Project someplace to help people, we -- they would -- they would say, "Well, you didn't follow through on what you'd promised you'd do last year," and so they wouldn't give us a Grant, which is necessary for this type of development. We'd be ineligible.

Q. Would that ineligibility or the prospect of that ineligibility deter you from constructing your Project after the November election?

A I don't understand what you're asking, but the possibility of us not getting it, make us not want to do it, is that what you're asking?

Q Yes.

A No. No, it wouldn't. We'd still want to -- we'd still try as hard as we could. A lot of people are going to be benefitted by this Project. I mean -

Q Is there a point in time where you will say, "We just simply can't do the Project in time"?

A That -- that point in time could happen this second. It's very complicated. There's a lot of things that will affect that decision. If interest rates rise above a certain --here's the thing, that fund, you have to match -- [P.31] number one, you match your sources and uses of funds. In other words, we've got a half million dollars in State and Local, County Grants, we have $125,000 in the Housing Trust Fund, we sell these tax credits for X-amount of dollars, which brings in equity, we have a construction loan

commitment from National City Bank, but those numbers are all fixed, that's the most it's ever going to be. You know, I can't -- and because I can't raise my rents, because I've committed to keep the rents at this certain level, so expenses go up, which throw my sources and uses out of balance, and we can't continue.

If lumber prices go up today to a level that we -- that's way above our budget, the ship is sunk as of this second.

If interest rates increased to a certain level, we're finished. There's a lot -- it just goes on and on and on.

Q Let's assume also, just a fact, and I'm going to assume this fact, you may or may not be aware of it, let's assume that the Board of Elections in Summit County does not certify an election result until mid-December. And let's assume that that certification is necessary for you to get your Building Permits.

[P. 32] If that is in fact the case, that the Board of Elections cannot certify the election till mid-December, and let's assume, again, that you win the election, would you still proceed with your Project?

A I really don't see how we could, Virgil. It would be a miracle at that point.

Q If you look at the cover of Defendants' Exhibit C, actually the -- go to the second page, please.

A This page? (Indicating)

Q Yes.

You've listed several people as Defendants. You've indicated the City of Cuyahoga Falls, and you've also indicated Don Robart, and we'll come back to him.

Looking at Gregg Wagner, has Gregg Wagner done anything to damage the Plaintiffs in this case?

A Personally?

Q Yes.

A No.

Q Has he done anything officially to damage the Plaintiffs in this case?

A I believe as an agent of the City he has, by processing the Referendum. I mean, processing the signature for the Referendum vote.

...[P.155] mentioned to Jack that I haven't been able to pay people as quickly as we would like, because this Project has put us in -- we have very little money in the bank, that's why I'm going out and begging people to help us, because of that. Some of my suppliers, my surveyors, Engineers, they've been without money on other developments for weeks, and they're not going to work for me anymore, so it's starting to affect other jobs that we have.

So that's what we have on the table at this moment.

Now what's happening next year, Virgil touched on it, if we don't get 50 percent completed, we're not going to be able to receive Grants for Projects we would do next year. And we had four reservations, we have four Projects under development now for 1996. Three in 1995. So it's just irreparable harm, it's really a tragedy, it really is. We're going to fight on.

MS. CITRINO: Thank you, I don't have anything further.

MR. MORRISON: Anything?

MR. ARRINGTON: Diane, I'd like to ask a follow-up question following up.

SELECTED PAGES FROM THE DEPOSITION OF FRANK PRIBONIC WHICH APPEARS IN THE DISTRICT COURT RECORD AT DOCUMENT NO. 48

***

[p. 21] A Yes.

Q What were the concerns that you, yourself raised at the meeting at your condo?

A The density, the burden on the Woodridge school system, traffic problems, on Wyoga Lake Road, that was probably most of it or all of it.

Q Okay. Was the Mayor responding to people's concerns?

Was that his role at the meeting?

A He was just sitting there.

Q Did he say anything at the meeting?

A I don't recall what he said.

I'm sure he said something but I don't recall what he was.

I don't know if he made a comment or not, to me, he didn't.

Was this a meeting that one person at a time was talking or were people just kind of milling about the room talking?

A Probably all 20 at one time.

Q Okay. Now we talked about that meeting at your condo in connection with my question

about whether you had any other meetings where Mayor Robart or other City officials were present other than City Council meetings, where you talked about this...

[p. 37]...referendum?

A No.

Q Was it discussed more than once?

A I don't recall.

Q Okay. But you thought it sounded like a good idea because you went ahead and took the initiative, right?

A You bet.

Q And was it your idea to call it Citizens for Preservation of Voters Rights?

A No.

Q Whose idea was that?

A That was one of the 20 or 30 people that were present at some of the meetings.

Q Okay.

Q Well, the only meeting that we have talked about that had 20 -- we talked about two meetings that had 20 or 30 people. One was at your condo where the Mayor was invited to attend and one was at this eatery at State and Bath Road.

Are you referring to one of those meetings or is there a different meeting that --

A Oh, we had several meetings at our complex and other houses, likewise.

[p. 38]

Q Can you tell me about those meetings?

A Well, they were all the same as the others, people were just talking about everything and

Q Okay.

A They were upset and nervous and concerned.

Q None of these meetings did anyone from the City attend?

A Not to my knowledge.

Q And the Mayor wasn't at any of those meetings?

A Not to my knowledge.

Q Did you walk around?

Did you have a walk list and ask people to sign the petition?

A Yes, I did.

Q What was it that you would tell people when you invited them to sign the petition?

A We asked if they would be willing to sign the petition to get this on the ballot in November

Q Did people ask you questions?

A No. Most of them were aware of the situation.

Q And were the majority of people willing...

[p. 59] ...east side before coming to the meeting?

A They talked to me about it, they found out about it.

Q Before the meeting on the 21st?

A Yes, that was not discussed in the Council meeting with those people by me.

Q But you had spoke with some people who lived on that east side before the meeting then?

A Some of the people came to our house during some of those meetings that we had throughout the early months.

A People that live on Wyoga Lake Drive and Pleasant Meadow.

Q Would you say that you were a leader of this referendum drive?

A No, our house was just the biggest.

Q Who were the leaders of referendum drive?

A Don't think there was a leader.

In fact, we had no leaders.

As I stated earlier, my name and my wife, Beth's name only appears because the Board of Elections said that we had no spokesman and no leaders.

Q Were there any people from the City that were particularly helpful for you?

A In what way? [p. 60] I don't understand.

Q In any way to do the referendum drive.

A They didn't-help us, we did it on our own.

Q Well, you mentioned Marilyn Slabey at Board of Elections?

A Talking about at the City of Akron.

Q She is at the City of Akron?

A Yes, the Suranit County Board of Elections.

Q Sorry, so that was Summit County?

A Yes.

Q Well, was there anybody at Summit County that helped you besides Marilyn Slabey?

A There was a Mary Pat, I don't know if that is her middle or last name.

Q Um -- Um.

A And there was a gentleman named Dan, I don't recall Dan's last name.

Q Did they all work at the Board of Elections?

A Yes or do.

Q Did they -- how much time would you say the 3 of them all together spent helping you with this?

A ½ hour, total man hours, ½ hour.

[p. 61]

Q Did any of them live in Cuyahoga Falls?

A I have no idea.

Q Did it come-up about what you were going be trying to put in this referendum?

Did you discuss the substance?

A We told them about what we wanted.

We were new to it, we wanted to know what you do to get something on the ballot in November and they were kind enough to tell us.

Q And how about with the City of Cuyahoga Falls, Council people, the Mayor, administrative people, City employees, any people like that who helped you with this referendum drive?

A No, we did it on our own.

Q Did you get any enccuragement from any people at the City?

A In what way did we get encouragement?

Our lines were set, we knew you what we had to do.

Q You told me you weren't sure whose idea referendum was?

A Right.

Q Could have been somebody from the City, their idea?

A Maybe.

[p. 62]

Q Okay, well, that is something I would consider encouragement to do it, if somebody gave you the idea to do it so that is what I mean.

A Well, maybe this will clear this up.

My son-in-law at one of our meetings said it seems like you should be able to put this to a vote, Dad, or to the people, maybe he didn't say Dad.

Q Okay.

A To the people and I think that jogged some minds, a situation like this could be put on the ballot.

Where he got his information, he is from Cleveland, I have no idea.

Q So he doesn't work for the City of Cuyahoga Falls?

A No.

Q. Was the Mayor at that meeting where your son-in-law brought that up?

A I don't know, I don't recall.

Q Do you typically attend public meetings of the Planning Commission or the City Council?

A No.

Q Is the one on February 21st your first, the first one you have ever attended?

A When this project came up for discussion,...

[p. 71]

Q Did anybody?

A Well, other than how are you doing, here are the petitions, we have 4,300 of them and --

Q Had somebody from your organization been communicating with the Law Department that you know of?

A No, we had no reason other than to ask them -- no, I don't even I know, I didn't.

Q I'm confused, because I know the City Charter for Cuyahoga Falls seems kind of confusing to me in terms of what the requirements are for a petition. I'm just wondering who helped you figure that out?

A Well, I don't mean to be -- how do I say it?

That way, to me, it wasn't confusing because Greg Wagner indicated that we need -- maybe it was Mr. Kennedy, that we needed 10% of the registered voters to sign the petition.

Q Okay. Well, do you know if it was Mr. Kennedy or Mr. Wagner?

A I don't recall, probably Greg Wagner.

Q Okay. Greg Wagner talked with you about it?

A Well --

[p. 73]

We had all the people that wanted to participate who came up to the stage and we said what Ward, what precinct, do you want hand them Wrote down the name and then said when you get things full, turn them in to us.

Q Us was?

A Me.

Q And that was meeting that Mayor Robart was at, correct?

A At the North Hampton Grange Hall?

A Yes.

Q And the Mayor did the Mayor ever express to you that he was in favor of this referendum going forward?

A I don't recall him saying anything about the referendum, being in favor or against it. It was our right to do.

Q Didn't he by staying and being at that meeting, indicate with his presence, that he was there to help you with the referendum?

MR. ARRINGTON: Objection.

A I didn't take that -- he was just there.

He didn't say anything to us about -- we already had ground work laid, he was just there.

Q Well, isn't the real reason that he.....

[The Following Appears as an Exhibit in the District Court Record at Document No. 50]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 5 96 CV 1458

BUCKEYE COMMUNITY HOPE FOUNDATION, et al.,
Plaintiffs

vs.

CITY OF CUYAHOGA FALLS, et al.,
Defendants

---oOo—

Deposition of GERALD M. DZURILLA, one of the Defendants, called by the Plaintiffs as if on cross examination, taken by Beverly J. Modic, a Stenotype Reporter and Notary Public within and for the State of Ohio, pursuant to the Statutes and the further stipulation of counsel herein contained, on Thursday, the 8th day of August, 1996, commencing at 10:00 A.M. at the law offices of Kramer & Niermann, 3244 Prospect Avenue, Cleveland, Ohio 44115.

---oOo—

[P. 2]

APPEARANCES:

On behalf of the Plaintiffs:

Kramer & Niermann
3214 Prospect
Cleveland, Ohio 44115
BY: EDWARD G. KRAMER, ESQ.
AND DIANE CITRINO, ESQ.

On behalf of the Defendants Gregg Wagner, Summit County Board of Education and Gerald M. Dzurilla:

Virgil Arrington, Esq.
2310 2nd Street
Cuyahoga Falls, Ohio 44221

On behalf of Defendant Mayor Donald Robart:

Amer, Cunningham, Brennan Co., L.P.A.
Key Building, Sixth Floor
159 South Main Street
Akron, Ohio 44308-1322
BY: STEVEN W. MASTRANTONIO, ESQ.

Also Present:

Mr. Steve Boone.

---oOo—

[P. 19]

drawings separately, and submit the comments on the project, and they are all incorporated in this letter.

Q. For an apartment complex of this size, does Exhibit 1 have an unusual number of documents?

A. No, it doesn't.

Q. Did you receive a follow-up to Exhibit 1?

A. Yes.

MR. KRAMER: Would you mark this, please?

---o0o—

(Whereupon, a document was marked for purposes of identification as Buckeye

Deposition Exhibit 2.)

---o0o—

Q. I show you what has been marked as Buckeye Exhibit 2.

Can you identify that document?

A. This was the developer's response to our initial plan review letter.

Q. Has the various departments in the City of Cuyahoga Falls now reviewed the additional materials that were sent with Buckeye Exhibit 2?

A. The Building Department reviewed all their items [P. 20] pending, and it was approved.

The only departments that had any disapprovals was the Fire Department. That was in the matter of a six inch water main versus an eight inch water main.

And the Planning Department had a disapproval, also.

Q. Was that information provided to the developer?

A No. We haven't got to that point.

Q And can you tell me why?

A Because let's see, there was a reason, because of the referendum issued. We asked the Law Department for a legal opinion on the case, and they told us because the plan basically was not approved, we would not issue a building permit.

So we stopped further action on the project.

Q Is there any reason why either the fire department or the Planning Department could not have provided information to the developer?

A (Witness shakes head).

Q Other than the fact that you can't issue a building permit?

A We can't issue a building permit until we got concurrence from all the departments, and we ...

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 5 96 CV 1458

BUCKEYE COMMUNITY HOPE FOUNDATION, et al.,
Plaintiffs

vs.

CITY OF CUYAHOGA FALLS, et al.,
Defendants

---oOo—

Deposition of LOUIS SHARPE, a witness, called by the Plaintiffs as if on cross examination, taken by Beverly J. Modic, a Stenotype Reporter and Notary Public within and for the State of Ohio, pursuant to the Statutes and the further stipulation of counsel herein contained, on Thursday, the 8th day of August, 1996, commencing at 1:00 A.M. at the law offices of Kramer & Niermann, 3214 Prospect Avenue, Cleveland, Ohio 44115.

---oOo—

[P. 2]
APPEARANCES:

On behalf of the Plaintiffs:

Kramer & Niermann
3214 Prospect
Cleveland, Ohio 44115
BY: EDWARD G. KRAMER, ESQ.
AND DIANE CITRINO, ESQ.

On behalf of the Defendants Gregg Wagner, Summit County Board of Education and Gerald M. Dzurilla:

Virgil Arrington, Esq.
2310 2nd Street
Cuyahoga Falls, Ohio 44221

On behalf of Defendant Mayor Donald Robart:

Amer, Cunningham, Brennan Co., L.P.A.
Key Building, Sixth Floor
159 South Main Street
Akron, Ohio 44308-1322
BY: STEVEN W. MASTRANTONIO, ESQ.

Also Present:

Mr. Steve Boone.

---oOo—

[P. 19]

A. I believe it is in the general provisions of the zoning code.

Q. What was your concern about providing this fence? What basis was the need for the fence to be put up?

A. I believe Mr. Boone and I discussed that at length, regarding the sensitive nature of the fact that this project would be a larger family type project where there would be significant amount of activity related to children, and that the adjoining property was currently developed as a condominium development with a large number of senior citizens.

There was concern on the part of the community that there would be interaction that was not warranted or wanted.

Q. Was this after any public meetings, or was it before?

A. Long before.

Q. And how were you aware of the concerns that the community had with having the Plaintiff's site being developed next to this condominium association?

A. In my 20 years of experience, I have come to be quite familiar with what the majority of....

[The Following Appears as an Exhibit In The District Court Record at Document No. 143]

APPRAISAL OF
6.2906 ACRE VACANT SITE
PLEASANT MEADOW BOULEVARD
CUYAHOGA FALLS, OHIO

Prepared for
Buckeye Community Hope Foundation
C/O Ms. Diane E. Citrino
The Housing Advocates, Inc.
3214 Prospect Avenue, East
Cleveland, Ohio 44115-2600

By
Brian W. Barnes, MAI, CRA
Brian W. Barnes & Co., Inc.
Realtors Appraisers Consultants
5900 Sawmill Road
Suite 120
Dublin, Ohio 43017-2539
(614) 761-0067
FAX (614) 766-2406

October 10, 1997

Buckeye Community Hope Foundation
c/o Ms. Diane E. Citrino
The Housing Advocates, Inc.
3214 Prospect Avenue, East
Cleveland, Ohio 44115-2600

Re: Complete self-contained appraisal of a 6.2906 acre vacant parcel of land located on the south side of Pleasant Meadow Drive, being approximately 450 feet west of Wyoga Lake Road, in the City of Cuyahoga Falls, Ohio

Dear Ms. Citrino:

Pursuant to your request, I have inspected the subject site known as a vacant 6.2906 acre parcel of land located on Pleasant Meadow Blvd. in the City of Cuyahoga Falls, Summit County, Ohio. At your instruction, I have completed an in-depth analysis and appraisal of the property in order to estimate the value of the **fee simple rights of ownership** thereto as zoned for medium density multi-family residential development to a density of twelve units and assuming a much lower density of 2 to 6 +/- units per acre. My analyses and conclusions are being reported in a complete summary report format attached herewith for your review.

Valuation Estimate

I have thoroughly analyzed the property and studied applicable comparable data as explained within this report. Subject to the premise of the appraisal as defined herein, it is our opinion that the most probable market value for the subject property, as of October 9, 1997, is:

As Zoned - R-17, Multi-family	$276,000
Market Value - If Zoned R-8	$157,000 to
(8 Units Per Acre)	$189,000

Market Value - If Zoned R-2	
or R-4 (Single Family Use 2	
to 4 Dwellings Per Acre)	$100,000

It is my opinion that a knowledgeable developer would most likely acquire the site near the lower range of the multi-family valuation at $160,000

This report has been prepared in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). Further, it is hereby certified that this appraisal assignment and the following report was not based on any requested minimum valuation, specific valuation, or any predetermined event. At your request, the valuation reported herein is in a complete self-contained format.

If you have any further questions or require additional information after reviewing this report, please contact my office at your convenience.

Respectfully submitted,

/s/ _____

Brian W. Barnes, MAI, CRA

State of Ohio General Certification #380582

BWB/lw

[The Following Appears as an Exhibit In The District Court Record at Document No. 143]

A REVIEW OF LAND USE PLANNING PRINCIPLES EFFECTING BUCKEYE COMMUNITY HOPE FOUNDATION et al. v. CITY OF CUYAHOGA FALLS et al.
CASE NO. 596 CV 1458
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

Report Prepared by:
Ailen Fonoroff, A.I.C.P.

MEMORANDUM

TO: EDWARD G. KRAMER and DIANE E. CITRINO

FROM: ALLEN FONOROFF, A. I. C. P.

RE: Expert Report Prepared for the Buckeye Community Hope Foundation Litigation

DATE: October 17, 1997

Upon being retained by plaintiffs counsel, I took the following steps to prepare this report. I first met with counsel on September 4, 1997 to understand the pertinent facts involving this litigation. During this discussion, I was given the specific assignment which is the basis of my opinions stated in this report. I reviewed the following data in forming my opinions stated in this report, including the *Cuyahoga Falls 2010 Land Use and Thoroughfare Plan*, the *Cuyahoga Falls zoning regulations effective July 23, 1974 and revised February 1997, the zoning map of Cuyahoga Falls*, and the *Site Plan for the Pleasant Meadow Apartment Complex*. Finally, I visited the site with Douglas Weatherbee, the architect for the project, to better understand the surrounding neighborhood and the

impact of the proposed apartment complex. I base my opinions on the above data and my some fifty (50) years of experience with land use issues.

Question presented: Is there any justifiable legal reason to deny the site plan of Buckeye Community Hope Foundation on Pleasant Meadow Blvd., Cuyahoga Falls, Ohio?

Based on my expert opinion, there is no reasonable justification or rational basis for the rejection of Ordinance No. 48-1996 by the Referendum held on November 5, 1996 rescinding the approval of the Site Plan for the Pleasant Meadow Apartment Complex.

The Site Plan

Many modern zoning ordinances, like the one adopted by the City of Cuyahoga Falls, contain provisions for site plan review, and this is among the most useful techniques involved in modern zoning. In regulating such development, site plan review performs appropriate functions which are concerned primarily with the layout of buildings and open space, including parking areas, and the provision for access to and from public street systems.

Site plans are essential in any type of multi-building development because they provide the picture of what will take place for all to see. This includes the planning staff, the Planning Commission, the City Council and all of the people who attend required public hearings. The approved site plan becomes an essential part of the implementation ordinances. This process provides the planning staff and others an opportunity to examine and conclude

whether or not a specific site plan is appropriate in terms of its impact on the neighborhood, its traffic generating capacity, and other considerations. The process is an effective means of regulating and improving land use development.

Review of Site Plan

My examination of the Pleasant Meadow development site plan reveals eleven (11), one (1) and two (2) story buildings containing seventy-two (72) dwelling units, provisions for off street parking within the interior of the development and U-shape access through the development providing two (2) points of ingress and egress. The land in question is located in an area zoned R-17, which is located on Pleasant Meadow Boulevard. This is a medium density land use area. The zoning ordinance for development for such an area permits nine (9) to seventeen (17) dwelling units per acre. The zoning designation reflects the recommended land use in the Cuyahoga Falls Land Use and Thoroughfare Plan.

The plaintiff's development proposal is well within all the requirements of the zoning ordinance-approximately eleven and one-half (11.5) dwelling units per acre. The dwelling units are located with yards and set backs exceeding those required by the zoning ordinance. The plaintiff's land is surrounded by one (1) and two (2) story residential construction and vacant land. Moreover, the area is served by public water and sewer, and there is no suggestion that seventy-two (72) additional dwelling units will overtax the system.

All of the material analyzed for the Pleasant Meadow development was discussed and examined with the public officials responsible for decision making, and during the course of public hearings. These officials would have reviewed the site and the neighborhood. They also would have examined the zoning ordinance and the Land Use and Thoroughfare Plan to insure compliance. All of this would have occurred before official approval.

In my opinion the proposed land use is very compatible to all of its surroundings. I cannot find any negative impact to the neighborhood in particular or the City of Cuyahoga Falls in general. Considering all these facts I conclude that there is no rational basis in law for the denial of this site plan. The zoning designation of the land, R-17, is compatible with the Land Use and Thoroughfare Plan adopted by the City of Cuyahoga Falls. The development proposal is also in accordance with that plan. The Planning Commission and the City Council approved this site plan in accordance with the Cuyahoga Falls Land Use and Thoroughfare Plan.

The proposed development conforms completely with all of the current regulations in Cuyahoga Falls. As the City's own Land Use and Thoroughfare Plan states:

> Medium density multi-family development is defined as apartment buildings, which will offer many of the advantages associated with single family homes. Garden apartments, as their name implies, have low land coverage. In

> keeping with a goal of preventing over crowding and the creation of desirable living space, development standards of a maximum of seventeen (17) units per acre are recommended

(Cuyahoga Falls Land Use and Thoroughfare Plan page 22).

Planning and Zoning

Planning is a means to a better and more economical government. Cities develop in response to economic and social requirements of their population. Zoning is a major legal tool to implement land policy as shaped by the city's Land Use and Thoroughfare Plan. The basic instrument of city planning is the Land Use and Thoroughfare Plan.

The city of Cuyahoga Falls appears to have prepared a very comprehensive and well-written plan. It is based upon economic, social, and environmental data, which is a reflection of the total community's needs and desires for its future development. The plan is also a foundation for the city's capital improvement program and capital budget. The latter earmarks the allocation of tax dollars to accomplish the physical needs identified in the Land Use and Thoroughfare Plan--parks, recreation facilities, streets, etc. Based on these analyses, the plan expresses the goals of the community.

All relevant information provides the framework for legislative action. The official adoption of the plan and the enactment of the zoning ordinance by the elective representatives of the people has a firm basis

in fact, not prejudice, whim or hunch. This comprehensive analysis by the legislative body is not duplicated by the referendum process.

"Land use planning implies looking toward the future welfare of the community and is essentially a local government function. It is a technical, social, and political process requiring a variety of information. The city administration studies population, economic, social and environmental data, and proposes changes in land use, infrastructure, and the physical environment. Translated into a current land use plan, the data provides an understanding of land use relationships and establishes the corollary between zoning, land use stability, and public health, safety and welfare." (Cuyahoga Falls Land Use and Thoroughfare Plan, page 13).

I have attended hundreds of Planning Commission hearings and meetings. I have reviewed thousands of site plans. My experience shows that the public vote rescinding Ordinance No. 48-1996 which had approved the Site Plan for the Pleasant Meadow Apartment Complex was not based on compliance with the municipal zoning and land used laws of the City of Cuyahoga Falls.

Ballot box decision-making exacerbates the problems inherent within traditional zoning decisions. The results are usually more extreme than those decided by local Planning Commissions since the public tends to react and vote their fears and prejudices (namely lowering of property values, introduction of incompatible lifestyles and the tax

burden of new children on the local school system) as reasons for denying an appropriate lawful site plan.

[The Following Appears as an Exhibit In The District Court Record at Document No. 173]

BUCKEYE COMMUNITY HOPE FOUNDATION

947 East Johnstown Road, Suite 221
Gahanna, Ohio 43230
(614) 337-9718
FAX (614) 337-2596
(614) 337-0480

June 20, 1996

City of Cuyahoga Falls
Engineering Department
2310 2nd Street
Cuyahoga Falls, OH 44221-2583

RE: APPLICATION FOR BUILDING PERMIT/PLEASANT MEADOWS APARTMENTS

Dear Sir or Madam:

On April 5, 1996, on behalf of Buckeye Community Three L.P., we submitted an application for a building permit for Pleasant Meadows Apartments, a 72-unit apartment development slated for construction on Pleasant Meadows Boulevard, Cuyahoga Falls. We have been advised that you are not processing this application because of a pending referendum vote which seeks to overturn the site plan approval which this project has received.

Under the authority of Gibson v. City of Oberlin, 171 OS 1 (1960), Buckeye Community Hope Foundation, acting on behalf of Cuyahoga Housing Partners, Inc., General Partner of Buckeye Community Three L.P., under the terms of a closely-held corporation agreement, hereby makes demand that you forth with issue the building permit referenced above or show just cause why the building permit should not be issued.

Please reply to this correspondence promptly because of the severe time constraints under which the development must proceed. Thank you.

Very Truly Yours,

/s/ _____
P. Gilbertson Barno
Executive Director

pgb:hs

[The Following Appears as an Exhibit In The District Court Record at Document No. 173]

City of Cuyahoga Falls
Department of Building Inspection
2310 Second Street
Cuyahoga Falls, Ohio 44221-2583
Phone: (320) 971-8100
Fax: (330) 971-8168

June 26, 1996

P. Gilbertson Barno, Executive Director
Buckeye Community Hope Foundation
947 East Johnstown Road, Suite 221
Gahanna, Ohio 43230

RE: Building permits for Pleasant Meadow Apts, letter of 6-20-96.

Dear Mr. Barno:

The Codified Ordinances of the City of Cuyahoga Falls prohibit me from issuing a building permit for a project that is not in compliance with the Zoning code. The site plan approval you claim to have received from City council is currently the subject of a referendum. By Charter, the ordinance granting that site plan approval does not take effect unless it is approved by the voters. It is my understanding that the Summit County Common Pleas court has ruled on the referendum issue, and upheld the Charter. Accordingly, there is no site plan approval as required

in the Zoning code, and I am prohibited by law from issuing a building permit.

Sincerely,

/s/ _____

Gerald H. Dzurilla, P.E.
City Engineer
Chief Building Official
City of Cuyahoga Falls, Ohio

GMD.cb

cc: Virgil Arrington Jr., Deputy Law Director

[The Following Appears as an Exhibit In The District Court Record at Document No. 173]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 5 96 CV 1458

BUCKEYE COMMUNITY HOPE FOUNDATION, et al.,
Plaintiffs

vs.

CITY OF CUYAHOGA FALLS, et al.,
Defendants

---oOo—

Deposition of DONALD L. ROBART, one of the Defendants, called by the Plaintiffs as if on cross examination, taken by Beverly J. Modic, a Stenotype Reporter and Notary Public within and for the State of Ohio, pursuant to the Statutes and the further stipulation of counsel herein contained, on Thursday, the 26th day of September, 1996, commencing at 9:30 A.M. at the Federal District Court, 2 South Main Street, Akron, Ohio.

---oOo—

[P. 2]
APPEARANCES:

On behalf of the Plaintiffs:

The Housing Advocates
3214 Prospect
Cleveland, Ohio 44115
BY: EDWARD G. KRAMER, ESQ. AND DIANE CITRINO, ESQ.

On behalf of the Defendants Gregg Wagner, Summit County Board of Education and Gerald M. Dzurilla:

Virgil Arrington, Esq.
2310 2nd Street
Cuyahoga Falls, Ohio 44221

On behalf of Defendant Mayor Donald Robart:

Amer, Cunningham, Brennan Co., L.P.A.
Key Building, Sixth Floor
159 South Main Street
Akron, Ohio 44308-1322
BY: JACK MORRISON, FR. AND STEVEN W. MASTRANTONIO, ESQ.

Also Present:

Mr. Steve Boone, and Mr. Mark McTernan.

---oOo—

[P. 7]...marked for purposes of identification as Buckeye Exhibit 16.)

---o0o---

Q. I am just going to show you what has been marked as Buckeye Exhibit 16. I don't believe you have seen this document before; is that correct?

A. I have not.

Q. What I am asking you in this question is, would you agree that the City of Cuyahoga Falls population is around approximately 15,000?

A. Yes, sir.

Q. And would it be fair to say that about 98 percent of the population is Caucasian?

A. Yes, sir.

Q. And that the Afro-American population is probably below one percent?

A. Yes, sir.

MR. ARRINGTON: Just note an objection to the record.

The document that you have given indicates an Afro-American population in excess of one percent, if you just simply....

[P. 37] (Whereupon, Mr. Morrison Left the deposition room.)

---o0o—

Q. Mayor, you have had a chance to look at Buckeye Exhibit 17; is that correct?

A. Yes.

Q. And that is the minutes of the Planning and Zoning Committee of Cuyahoga Falls City Council for March 4th, 1996; is that correct?

A. Yes.

Q. Do you usually attend the Planning and Zoning Committee Meetings?

A. Yes.

Q. When you attend those, are you doing that in the course and scope of your official capacity as Mayor?

A. Yes.

Q. And you were at the March 4th, 1996 meeting; is that correct?

A. Yes.

Q. Would you go to Page 11?

A. Okay.

Q. And I would like you to read on Page 11 and 12, 13, and part of 14, the statements [P. 38] that are attributed to you.

Now, and then I am going to have some questions to ask you.

A. (Pause).

Q. Mayor, you have had an opportunity to read those pages that are attributed to you?

A. Yes.

Q. Buckeye Exhibit 17?

A. Yes.

Q. Okay. My first question is, is there any of these statements that are attributed to you, which you believe you didn't make?

A. No.

Q. Second, with regards to Buckeye Exhibit 18, after reading Buckeye Exhibit 7, and specifically the statements you made, do you recall whether or not at this meeting you had a copy of Buckeye Exhibit 18?

A. I don't recall.

Q. On Page 11, you made a statement, I point that out, because in George's memo that came out to you, it sort of implied as though we had at local government, some control to turn this thing around.

[P. 41]

...I know Mr. Potts was very, very concerned.

Q. So while you can't recall specific meetings or discussions with Mr. Potts, is it fair to say that you believe you did discuss Buckeye Exhibit 11 with Mr. Potts prior to the March 4th, 1996 Planning and Zoning Committee meeting?

A. I don't recall speaking with Mr. Potts about the exhibit. His form of informing his counsel or his constituency is his decision.

I was referring to the fact that he had brought concerns to me fairly often during that time frame relevant to his feelings about it.

Q. And what was his feelings concerning the project?

MR. MORRISON: Objection.

Q. Or what did he express to you?

MR. MORRISON: Objection to the form of the question.

A. He felt that the public at large, the majority of the public, was strongly opposed to this project, and the momentum, [P. 42] I am characterizing for him, but the momentum in opposition to this project was growing rapidly.

Q. Turn to Page 12 of Plaintiff's Exhibit 17, at about two-thirds down, you make a series of statements, "We can be sued as a City, we can be sued individually in our individual capacities, we can be sued as an administration and City Council, and in the end, if we are, the reality is, we are probably going to lose."

I guess first, why did you make that statement at that time?

MR. MORRISON: Go ahead and answer.

A. Because that's what was related to me from the Law Department.

I am not an attorney, so I have to bank on them.

Q. Now, further down on Page 12, you make the following statements. "I noticed in the paper today and some of you might have read it, there was an article called "Mark's stuck in the ghetto".

It talked about subsidized housing, [P.43] Section VIII housing, and it talked about problems associated with it.

If you read it, it said the proponents of subsidized housing want to put the low income out into the suburbs.

Now, why did you make that statement at that time?

A. Because that was a lot of the sentiment that was being conveyed to my office.

Q. Concerning the Plaintiff's project?

A. Correct.

Q. On Page 13, you continue, "Part of them was -- "we in Cuyahoga Falls, Tallmadge, and Stow, and some of the other suburbs ought to have more subsidized housing.

Well, the reality, folks, is we have done our part. We have done our part off of Graham Road."

What are you talking about?

A. We have a fairly large project of subsidized housing off of Graham Road in Cuyahoga Falls.

Q. And is that on Prange Drive?

A. Yes.

Q. And when did that project come in?

[P. 44]

A. I would say that went in in the early to mid 1980's.

Q. Have you ever been in that project?

A. Yes, sir..

Q. And did you observe any Afro-Americans living in that project?

A. Yes.

Q. Would you agree or disagree that the project on Prange Drive is the only place in Cuyahoga Falls that has a substantial number of Afro-Americans?

MR. MORRISON: Objection.

MR. ARRINGTON: Objection.

A. To the best of my knowledge, it is.

Q. Now, continuing on Page 13, it states, "So anybody that wants to paint us as bigots or anything else is flat out wrong."

Why did you make that statement?

A. I made that statement because I am sensitive to a perception that the community has any racist or bigoted tendencies. The local newspaper periodically used to write, they haven't for some time, but they used to use the [P. 45] term Caucasian Falls with reference to the City.

I think it was more of a play on words than anything else, but they were fond of pointing that out.

Q. You say the local paper, is that the Akron Beacon Journal?

A. Yes.

Q. Now, going down on Page 13, you indicate Wayne Jones said the same thing. I think he is right.

Do you recall what Mr. Jones said?

A. I don't recall. I would have to go back and read it.

I expect it is in here. Do you want me to do that?

Q. Yes, let's do that.

A. (Pause)Do you want to rephrase the question, or repeat the question?

Q. My question is, when you indicated that Wayne Jones said the same thing, I think he is right, what were you supporting that Mr. Jones had said at the March 4th, 1996 meeting?

A. I think it was the issue of density and [P. 46] putting too many people in a small area.

MR. ARRINGTON: Could we go off the record for a second?

---o0o---

(Whereupon, a discussion

was had off the record.)

---o0o—

MS. CITRINO: I would like to introduce Mark McTernan. This is a student working at the Housing Advocates.

MR. KRAMER: In fact, why don't we take a break for a second.

---o0o---

(Whereupon, a discussion

was had off the record.)

---o0o---

MR. KRAMER: Would you read back the last question and answer, please?

---o0o---

(Whereupon, the preceding question and answer were reread by the Court reporter.)

--o0o–

Q. Did you agree with what Mr. Jones said as attributed to him on Page 10, and I [P. 47]

quote, "The problem is condensing these individuals in one place like Prange Drive. It just breeds problems. I think it is a legitimate concern"?

A. Yes.

Q. Going back to statements that you made on Page 13, and I quote, "With the addition of this project, it has been suggested it would depreciate values in the Falls."

What were you talking about concerning this statement?

A. I think what I was doing there was echoing comments I had heard from my constituents.

Q. You don't know whether that's true or not?

A. No.

Q. Okay.

A. And I think I made reference to that in my comments.

Q. Now, you also indicated on Page 13, as to what is the impact on Cuyahoga Falls for police and fire.

Now, at this time, you had already gone down to see the Troy, Ohio property; is that correct?

A. That's correct.

[P. 63]

...here, density is not an issue here".

You made that statement; is that correct?

A. Yes.

Q. Do you still agree with that statement?

MR. MORRISON: Objection to the form of the question.

A. Yes.

Q. Going on Page 13 of Exhibit 8, you state, finally, "I said that so many times that I thought why would me or anybody else on City Council advocate anything for this City that is clearly a step backwards, and that is where I made the decision saying We have to oppose this, and we have to oppose it with vigor."

You made that statement, correct?

A. Yes, sir,

Q. In your opinion, why would this development be a step backwards?

A. Again, I was echoing the sentiments of the constituents that were becoming louder and louder on a daily basis.

Q. Do you have a personal opinion whether or not the Plaintiff's project is a step [P. 64] backwards?

A. No.

Q. You would agree that the Plaintiff's project of 72 units is being built in an area zoned properly for that development; is that correct?

A. Yes.

Q. You would agree that your Planning Commission approved the site plan; is that correct?

A. Yes.

Q. Now, it is true that the City Council itself voted to approve the site plan; is that correct?

A. Yes.

Q. But starting on March 18th, 1996, in your official capacity as Mayor, you indicated that you would have to oppose this project with vigor; is that correct?

A. Yes.

Q. And this was made in front of a number of the residents who became the individuals who lead the petition drive to get the referendum on the ballot; is that correct?

MR. MORRISON: Objection. [P. 65] That's an improper question.

I object to the form of the question. I object to the characterization of the question. I object because there are facts contained in your question that are not accurate.

Read the question back. question. Listen to the question.

---o0o---

(Whereupon, the preceding question was reread by the Court Reporter.)

---o0o—

MR. MORRISON: Objection, for the reasons I already stated.

Mayor, if you can answer the question, go ahead.

A. I believe it was.

Q. Now, with regards to your statements on Page 13, you indicate that, "'Now, I heard Sandy's comments. I think he is basically on target."

First, were you referring to Sandy Rubino, the City Councilman; is that correct?

[P. 66]

A. Yes.

Q. And what comments were you referring to in that statement?

A. I assume. I didn't read his comments, but I assume he is talking about a lawsuit, and the fact that the City would be vulnerable.

Q. In addition, further down at Page 13, you say a couple things. "If he sues, guess what, we have an in-house law department. Now, they get paid whether they are defending this case or if they are defending another case."

What was the purpose of you making those statements in this setting?

A. I am not sure, but I think it was a reference to the fact that if Council defeated the ordinance, that the City would have the wherewithal to defend the lawsuit.

Q. At the time you made that statement, when you said, if he sues, you are talking about the Plaintiff?

A. Yes.

Q. By March 18th, 1996, you were aware that [P. 67] your Planning Director, Lou Sharpe, had indicated that there was no valid reason to deny the site plan; is that correct?

MR. MORRISON: Objection to the form of the question.

MR. ARRINGTON: Objection.

A. Based on his opinion, yes.

Q. And at that time, you had also been informed by your Law Department that there was no basis for denying the site plan; is that correct?

MR. MORRISON: Objection.

MR. ARRINGTON: Objection. Don't answer that.

MR. MORRISON: For the record, it is protected by the attorney-client privilege.

MR. KRAMER: I believe he waived that because he already testified –

MR. MORRISON: Well, you can take that up with the Judge later. But we are going to instruct him not to answer that now.

Q. Okay. At the time you made that statement, you also heard Councilman Rubino's...

[P. 79]

...Schultz's were there, although I couldn't swear to it. But have popped up frequently.

Mr. Minire, I would assume was there, pretty much the same people who have been in the forefront.

Q. And what was the purpose of this meeting?

MR. ARRINGTON: Objection to the form of the question.

A. I believe the purpose was to organize the referendum drive.

Q. Did you make any statements at that meeting?

A. I am sure I did.

Q. What do you recall you stated at the meeting?

A. There were a lot of questions relevant to the process, the number of signatures needed, timing, a lot of questions relevant to the probable success of the drive, just sort of picking my brain as to what I knew.

Q And you were at this meeting in your official capacity as the Mayor of Cuyahoga Falls; is that correct?

[P. 80]

A. Yes.

Q. By the way, how far away is your residence from the proposed project of the Plaintiff?

A. Five miles.

Q. Okay.

A. I live on the east side, about as far east as you can get in the City.

Q. Were there any questions that you were asked at this meeting at the Prubonics' house, which you subsequently had to call upon anyone in the City to find out the answer?

A. I don't recall any.

Q. Would you say you are fairly familiar with the referendum process as it is in Cuyahoga Falls?

A. Well, I am becoming more familiar with it, that's for sure.

Q. Do you do anything before this meeting to look up the referendum procedure in the charter?

A. Oh, I am sure I did.

Q. Did Mrs. Prubonic, when she had contacted you, indicate that they had some questions about the referendum process that they...

[P. 84]

...after April 1st?

A. This would have been the second.

MR. MORRISON: Objection to the form of the question.

Q. Okay.

A. That would have been the second meeting.

Q. The second meeting would have been Tuesday, April 29th?

A. Right.

Q. At the North Hampton Town Hall?

A. Right

Q. You testified also that you didn't see Buckeye Exhibit 10?

A. I didn't see Buckeye Exhibit I0.

Q. Now, how did you learn that there was going to be a meeting at North Hampton?

A. I received a phone call.

Q. And who called you?

A. I assume, and I hate to use Gerry Prubonic's name, and incidentally, I assume it was her, but it could have been someone else. I was receiving a lot of phone calls at this time as the issue grew in controversy, and my phone kept ringing.

Q. At this first meeting at the Prubonic home, [P. 85] was there any discussion about the name of the organization to do the petition drive?

A. Yes.

Q. And do you know who suggested Citizens for the Preservation of Voter Rights?

A. I don't recall.

Q. Were you involved at all in the discussion about the name?

A. Yes.

Q. Okay.

A. My only recollection is the first name they had, I didn't like, but I don't recall what it was.

Q. Do you know whether or not you suggested Citizens for the preservation of Voters Rights?

A. No, I did not.

Q. Whoever came up with the name, you agreed that that was a better name than the original name; is that correct?

MR. MORRISON: Objection to the form of the question.

A. Yeah.

Q. Have you in any way solicited or encouraged...

[The Following Minutes Appear as an Attachment to the Plaintiffs' Supplemental Brief in the District Court Record at Document No. 173]

CUYAHOGA FALLS CITY COUNCIL PLANNING AND ZONING COMMITTEE MEETING

March 18, 1996

MINUTES

On March 18, 1996, a Meeting of the Cuyahoga Falls City Council Planning and Zoning Committee was held in Judge Hoover's Court Room, the Municipal Building, 2310 Second Street, Cuyahoga Falls, Ohio at 6:15 p.m.

MEMBERS	Mrs. Hummel, Chairman
	Mr. Schmidt
	Mrs. Klinger

Mrs. Hummel called the meeting to order at 6:15 p.m.

The minutes from the March 4, 1996 Committee Meeting were approved as submitted.

LEGISLATION CONSIDERED

An appeal on a denial from the Planning Commission relative to file A-3-96-Z.

Temp. Ordinance A-39 - Approve plan for development - 72 unit apartment complex on Pleasant Meadow Blvd.

DISCUSSION

Appeal A-3-96-Z - Mrs. Hummel stated this is a parcel on Bailey Road near Monroe Falls Avenue. She has given copies of the staff summary and the minutes to the other two committee members. Mrs. Hummel has reviewed these and does not see any new information or reason to send this file back to the Planning Commission.

Mr. Schmidt and Mrs. Klinger concurred.

Mrs. Hummel asked Mr. Arrington to prepare an ordinance relative to the appeal we have received.

A-39 - Mrs. Hummel introduced the Planning and Zoning Committee and explained the format of the meeting.

Mr. Lee Minier, 3404 Prescott Circle, read a letter from Mrs. & Mrs. Suren, 388 Village Court. They expressed their concerns and objections to the proposed federally assisted low income apartment construction. Having attended the Planning Commission and the prior Committee Meeting, they stated there is no doubt as to the serious community objection and disapproval of this project. They stated marginal attention has been given to the additional burden on the police and fire department as well as sewers, roads, and traffic. They were also concerned about the impact to the Woodridge Schools. They also quoted the preamble to the 2010 Land Use Plan and stated the meaning expressed has been misplaced. Mr. Minier added his own comments. He objected to comments made by some city officials, that were part

of the administration, that they believed that eleven or twelve of us were troublemakers and stirred everyone else up. He does not believe all these people showed up because he has a problem. Secondly, he objected to the comment in the Beacon Journal, made by our Development Director, that either we do not understand this process or do not get it. He said, I think we do get it and maybe the city does not get it. We do not want this.

Mr. Steve Boone, President of Buckeye Community Hope Foundation, stated "as you are all aware we are seeking approval to obtain a building permit to construct 72 units of multifamily housing in the 300 block of Pleasant Meadow Blvd. According to your city solicitor, this approval is being sought pursuant to City Charter Article VIII, Section 1.7, which states. "All plans recommendations, regulations, and decisions made by the Planning Commission, which result in approval of request, shall be submitted to and approved by council before the same shall be considered official." On February 21, 1996, we received site plan approval by a unanimous vote of the Planning Commission. This approval was granted due to the fact the land was properly zoned for this development. The development met or exceeded all requirements set forth by the City of Cuyahoga Falls. So at this time we are seeking your approval of that unanimous decision. During the past two public hearings, we have attempted to describe the development in a fashion which accurately depicts the tremendous market need, as well as the quality of our construction. I feel very strongly that our message,

although heard by the residents of Cuyahoga Falls, certainly to date has not been believed. We believe, that the site development review of Council should have limited testimony to site development concerns. This did not occur, so in the spirit of community, once again, I will attempt to address a few of the misconceptions that I feel exist at this time.

Misconception # 1 - Section 8 - Section 8 properties involve a government subsidizing of the rent, the resident on an annual basis only pays his rent and utilities, which are computed as 30% of their annual income. In this development, everyone pays the same rent, entirely out of their own resources. Again those rents are $357 for a two bedroom apartment or $451 for a three bedroom apartment. In addition to these charges residents would also pay their own utilities.

Misconception #2 - Density - The site we will be developing has been zoned by the City of Cuyahoga Falls as R-17. What this means is that the City felt that it was appropriate to construct up to 107 units on this site. We are considerably below that level at 72 units.

This represents 67% of what the City of Cuyahoga Falls decided would be appropriate density for the site in question.

Misconception #3 - Overburden of city resources - We entirely disagree with all such declarations. These issues are zoning related and in this regard this is not an appropriate forum for such discussion, since our development already complies with Cuyahoga Falls zoning ordinances and its requirements.

Misconception #4 - School density - Again we fell this is an issue that should have been deliberated when the land was zoned. It has been reported that a consultant projected that "42 students would be coming from the area", we question this study and suspect that such a claim could be extremely misleading. For example, what is meant by this area? Will other areas under produce students following development of their area. In addition, our experience has shown that although not marketed to the locals exclusively, 80 - 85% of the additional residents, who occupy the housing come from the local community. With this in mind, it is difficult to believe that a large percentage of the children, who will reside at the community do not already attend school in Cuyahoga Falls.

Misconception #5 - Increased traffic - Again, this is a zoning issue and that should not be addressed when considering site plan approval. However, we find it curious that a 92 unit development received approval by this council a few years ago. 92 units would most certainly produce more ears than 72 units.

Misconception #6 - Ability of school bus to turn around - The City's Fire Chief feels that a fire truck can adequately turn through the property. So unless your school buses are larger than your fire trucks, it is our opinion that this concern is resolved.

Misconception #7 - Retirement community vs. family community - The fair housing act 42-US-3601 states that it is a violation of the federal fair housing act for any person including a municipality, to make

unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin. In addition to that Ohio Revised Code Section 4112:02H1 states that it is unlawful and a discriminatory practice for any person to deny or make unavailable housing because of race, color, religion, sex, ancestry, handicapped, national origin or familia status.

In summary, we feel we have the legal right to proceed, and we are at this time requesting to council to not delay our efforts any longer. We understand the tremendous pressure the community has brought to bear upon you as elected officials. However, please remember the voters that placed you in this position of trust, places you in that position to do what is legally right for the community, not what happens to be popular. Thank you very much."

Mrs. Hummel stated she had talked with Dr. Clapp and the school bus would not be coming down Pleasant Meadow Blvd.

Mr. Roy Lowenstein, Vice President for development with Ohio Capital Corporation for Housing, stated Ohio Capital is working with the grant and bank financing. Ohio Capital has invested in 40 projects around the state. Ohio Capital will be around for 15 years assisting management and making sure the site is in compliance. They feel there is an overwhelming need for this type of affordable housing and that this site is suitable for development. He stated this is your community and we cannot tell you how to solve this problem, but you do have a problem. The

rules have been stated in a zoning code and a negotiation process with the city staff has shaped the project in a positive way. You now have a development that meets or exceeds all the zoning requirements of the City. If Cuyahoga Fails is to be guided by the rule of law, rather than simply by popularly held fears, then it is up to the Administration and City Council to be leaders and to tell the truth to the citizens that they as a community cannot act in a discriminatory manner.

Mrs. Patricia Bryan is concerned about this community not other communities. She does not feel Cuyahoga Falls has been discriminatory in any way shape or form toward housing for anybody that wants to live in this town. If you can afford to live here their is housing available for you. We have got our ghetto. We have got our low income housing. This project is already being called Pleasant Ghetto. People are already calling it that.

Mrs. Hummel stated I have not heard it called that Mrs. Bryan.

Mrs. Bryan stated, "Well, I have quite a bit and it is not funny. You know I do not want that in my community any more. We already have enough of that. Thanks."

Mrs. Shirley Matuska stated we have a Home Builder's Association in the Akron area. If this is such a wonderful area to build this type of housing why in the world did somebody have to come from Columbus to do it?

Mrs. Jerry Pribonic stated, that she did not agree with Mr. Boone's comments that this is political or that we are here out of fear or that we were ugly to him. She stated the area would be to crowded. She also stated, "I do not see that our school system is correct for these children, that would be there." She resents people coming in here and saying that all these gracious intelligent people are mean, ill-tempered and have fears.

Mr. Larry Hart stated he would be directly impacted by this development. He feels that the kids will be running through their development.

Mr. Frank Santos does not believe the Planning Commission took into account that most of his development was senior citizens. He feels, that the peace and quiet of their development will be changed.

Mr. Don Bridenthal asked what does the legal department say since the last meeting.

Mr. Arrington stated basically what you have in front of City Council tonight is a site plan review. The plan will either be approved or disapproved based on the site plan. We have not received any request from City Council for a legal opinion.

Ms. White stated she would like to request the legal opinion. In relation to the Mayor's letter that we received dated March 13, 1996. The Mayor seemed to be suggesting that we reject this proposal, but on what legal basis, if any? That is why I am asking for the legal opinion.

Mr. Arrington asked that the request be made in writing.

Ms. White stated she would put it in writing.

Mrs. Beverly Smith has concerns about Mr. Boone's statement about the enrollment projections. With this large influx of students coming at once she questions where the additional tax money is going to come from. She feels it will come from all of us. She stated that Mr. Boone said we did not hear his comments. We did hear, however, we feel he was not very straight with us. She feels that the citizens do have a right to oppose this development.

Mr. Don Hinson asked if Mr. Boone would withdraw his application for approval of the project.

Mr. Boone stated, no he would not.

Mr. Tom Allio - (The following is a copy of the letter handed to the Clerk by Mr. Allio titled "Remarks of Tom Allio, Cuyahoga Falls City Council, March 18, 1996 which he read)

Thank you council for giving me this opportunity to make some brief remarks about the Buckeye Community Hope Development. I am Tom Allio. I am a resident of the 7th ward in Cuyahoga Falls and I serve as executive director of the Catholic Commission. For nearly 25 years, the Catholic Commission has served Summit County as the official social action arm of the Diocese of Cleveland. The Commission is involved in a wide range of public policy issues on the local, state and national level. In

addition, we have formed some 18 non profit agencies like the Akron-Canton Regional Foodbank, ACCESS, an emergency shelter for the homeless, the Good Samaritan Hunger Center and the Summit County Housing Trust Fund.

As a resident and in my capacity with the Catholic Commission-I would like to say that there is a need for the kind of high quality, low cost housing that is proposed by Buckeye hope. It would be an asset to our community. For instance, there are thousands of current Falls residents who would be eligible to reside in Pleasant Meadows. There would be people you would know who you might not expect would be income eligible for this development. Fire fighters just starting out in the Falls make $26,328. Some of them could be eligible for Buckeye Hope or how about the men and women who serve our city on the police department. Starting salaries for police officers are $26,540. The librarians who serve the community at Taylor Memorial Library start off at $20,779. They might welcome the chance at finding a decent place to live with rents that are far below the median rents in the Falls or how about the young mother with three children who is a starting teacher in the Woodridge School System, making $23,576 a year she would probably jump at the chance to move to Pleasant Meadows. These professionals and others like them serve our community well. Let's not close them out.

They all have names and faces. They are not just uncontrollable children, and noise makers who are going to make our streets congested or overload our

school system. No one should be concerned about there self esteem or whether someone is going to label them as a residents of Pleasant Meadows. The point is our community is enriched with people of different economic, social, cultural and racial backgrounds. It is a healthier and more vital community when it reflects such diversity.

Council knows the truth about this excellent development. You know that most if not all of the issues raised are false and do not merit your voting down this project. Council, I understand that for many of you this is a difficult decision. I respect the pressure you are under. But, sometimes leadership calls people to do the right thing not the expedient thing. It calls for leaders to make principled decisions rather than political ones. To act courageously when there may be great risk. Thank you for allowing me this opportunity.

Mr. Willett, the Dales, stated they moved there because of Woodridge Schools. Will they go to Cuyahoga Falls or Woodridge Schools?

Mrs. Hummel stated the children will be going to the Woodridge Schools. The problem is the number of students is higher than the projected number Woodridge consultants came up with a few years ago.

Mr. David Willett stated he has a problem with the different numbers being thrown around. He estimates it will take $150,000 extra for teacher's salaries and they are only paying $30,000 in school tax. He also questioned rent figures and income amounts.

Mr. Lowenstein stated the income eligibility numbers and the way they are computed.

Mrs. Santos, Prescott Circle, asked what tax base would the development generate and could they build single family homes?

Mrs. Hummel stated the tax to the schools was computed at around $31,000 and they have R-17 zoning and they plan to develop at this density.

Mr. Thomas Lee, 3512 Prescott Circle, said he is concerned about the drugs and drinking in this section.

Mrs. Hummel stated she did not feel that was pertinent. We do not even know who is going to be living there yet.

Mr. Lee stated what about the noise factor. "I would rather have the gun club there". He stated when they get that boom box going it will be loud. He feels that these gentleman are here to set us up for a lawsuit, from the comments that he hears.

Mr. Rubino stated "I am going to be very honest with you folks. My name is Sandy Rubino, I am a Councilman-at-Large, that means that I represent you and everyone else in Cuyahoga Falls. I have been wrestling with this issue for two weeks and I have not gotten a lot of sleep. I am tired - O.K. I have looked under every rock in your behalf, and other members of council have too. I heard, that we might have wetlands out there. I spent the better part of a week exploring whether we have wetlands. To see if that is a

legitimate site plan review issue. Turns out that it is not true, there is about 4,000 square feet out there, and you need an acre to constitute a wetland, that is federally regulated and protected. Because I am an attorney, I have looked at the legal issues too. I cannot hide as an officer of the court and a lawyer, from what I believe the truth is. So, what I am going to tell you tonight is what I perceive to be the truth plain and simple. This project is before us on one simple issue, a site plan review. A site plan review allows us to look at whether that project is within the zoning that is already been enacted into law in the City of Cuyahoga Falls. We are not allowed in my mind, unless a legal opinion from the law department tells us otherwise, and I am anxious to hear what the law department has to say. But, we are not allowed to know if there is going to be 100 kids there, 50 kids there, it is not pertinent to the issue of whether that particular construction project meets our zoning requirements. Our zoning requirements have nothing to do with how many kids there are. Our zoning requirements have nothing to do with whether people drink, whether people smoke, whether people shoot guns, whether people do anything. We only have one thing to look at. I thought to myself, you know Sandy, your kind of a home grown politician, you spent your whole life here. I would hate like Hell to have to look you all in the eyes and vote yes for this project. But, unless I hear something to the contrary from the law department, I do not have any choice. I am being honest with you and it breaks my heart, because you are good people and you deserve consideration. You deserve to have

your opinions heard tonight and in the past. But, I know deep in my heart what is coming. Somebody mentioned that somebody was setting up a record for a lawsuit. You know what, I am a lawyer, I have been in trial courts for twenty years and you are probably right. I have been getting letters and I have seen the comments in the Beacon Journal. I have seen and heard a lot of things. I know when a record is being created for a court of law and I believe a record may be being created here. So, all your comments, when this City goes to court someday, if this is turned down, about children and all this other stuff are not going to mean diddley, unless somebody proves me wrong or offers something to the contrary. Now the Mayor has proposed something in a letter, it has to do with the preamble. I would like to hear more about that. I suppose we will get something from the law department. Ten weeks ago, I took an oath that I would uphold the laws of the United States, the State of Ohio, and the City of Cuyahoga Falls. It is one thing to be able to say, the Hell with the law, l am going to nullify it because I do not like it. l have got deep reservations. I am not sure in my heart, that sociologically maybe where there coming from it is the right thing to do. And I know that somebody somewhere is going to make money off this. Whether it is tax credits or something else. I know as a community we will have to pick up the slack because it is not single family homes. But, I am an officer of the court and I am telling you folks the truth, unless somebody can tell me to the contrary, I do not think, I have any choice but to vote yes. If we get sued, and I

am sure we will, are we willing to spend (and I am just going to throw out numbers) one million or two million just to fight the inevitable and have them build it anyway. That is what I have to worry about as a Councilman-at-Large. Are we going to spend a million dollars fighting something that we know is eventually going to be built? This has nothing to do with whether the project is proper. This has to do with whether these folks have the proper R-17 zoning. And I am going to tell you that it is zoned R-l7. I said it a couple weeks ago, that it is amazing to me that the land in that area has not been preserved for the people of Cuyahoga Falls as a trust. And I still would like to see those other two sites kept as an arboretum protected for the people of Cuyahoga Falls. In my mind it is too pretty to do otherwise. Folks, I hope you do not hate me, I am just telling you the truth as I see it. And unless I hear something from the law department otherwise, I have no choice but to vote yes on this."

Mrs. Debbie Rich, 24th Street, said what you are saying is that legally they have every right to do this. That is well and good but does that mean you guys are just a bunch of puppets. You cannot do anything for us anyway. If you vote no, does that mean it does not happen?

Mr. Rubino answered, if we vote no we will be sued. We will probably pay not only our attorney's fees, their attorney's fees, we will pay damages for any delay of the project. There is a lot of things that we could pay for. And I have to ask myself, am I willing as a Councilman-at-Large to risk all that, to risk a million

dollars let's say, when I know something is going to happen that is inevitable.

Mrs. Rich said I understand, but you guys work for us and this is what we want. If we get sued somewhere down the line, fine, if we do then we fight about it then.

Mr. Rubino stated you know what I have been studying now for two weeks, myself. He stated he has found no way around this. If someone knows a legal remedy, tell me, I am all ears. "I represent you folks along with the rest of the City and I take that very seriously and I cannot in good conscience vote for something that I believe violates the law. I do not have that luxury."

Mrs. Rich stated I understand that, but you have to understand whoever is my Councilperson, I pay his salary. You are paid to do what I want. That is why we are all here. What we are saying does not make any difference? Why waste the time?

Mr. Rubino stated "I agree with you, if this were something that I had flexibility in like zoning - like whether we should zone this R-17, R-8 or R-1. I could listen to your concerns and say yes, your right, let's zone this R-1. However, this has already been zoned. The City has already zoned it.

Mrs. Hummel stated "let me explain something. We have an active application on a zoned piece of property. The application fits the zoning that is currently in place. We cannot legally change the zoning out from underneath an active application.

This application is what we are talking about right now. We cannot when they have already applied for something that they have the legal right to apply for, based on an active zoning that was in place. We cannot change the zoning out from underneath them. No court would uphold that."

A lady stated what about the tower?

Mrs. Hummel said what tower? I do not know which tower. There are two towers out there. Are you talking about the Blossom tower or the City's tower?

The lady said the City's tower.

Mrs. Hummel stated "The City's tower will be sited somewhere. Hopefully it will be agreed upon by everyone. There was an outcry by the residents in Ward 8 that they did not want it in Keyser Park and I think the Mayor has pretty much promised that it would not be there.

Ms. White stated "I am Debbie Rich's Councilperson. I respect your opinion and I would like to tell you something. I will represent you and do everything I can for you within the limits of the law. Most of the people in Ward 3 know that. Referring to Sandy's comment the question is really, are we to be expected to reject this project, be sued, which we will be. Mr. Boone has already flatly stated he would sue us, and then we would pay the price for losing that suit, a suit that we are likely to lose. If it is millions of dollars, my people in Ward 3, through their tax money are going to pay for that. That is really the issue and I can attest to the work we did on this. The three of us,

Mr. Rubino, Mr. Wagner, and I were out trudging around in about seven inches of mud. Shooting those pictures over there to try to establish this as a wetland. Just to get any legal shred that we could hang onto so that we could reject this project. We really mulled this over for a long time. This is very difficult and I am heartsick about it also. I would rather see it go another way, but I agree that rather than spend the money to fight a law suit that we do not have much likelihood of winning. We might want to spend the money negotiating the purchase of the adjoining land so that this situation over there is not further exacerbated.

Mrs. Reese stated "I think all of us have been torn by all of this. Everything that you said two weeks ago really did get my heart. It really did affect us. We have been mulling over this and I know some of my colleagues have taken it several steps further. I am thanking you for your letters, your thank-you notes, your admission that this is indeed a dilemma for us. I think what this has really brought to the floor is how important it is to review the land use. We really need to look at the way we are planning. I do not think we can go back. I know we cannot rezone this thing. But, we can look at what remains and with that maybe envisage something maybe better.

Mrs. Jenkins, 3474 Prescott Circle, stated what we seem to be doing here is locking the barn door after the horse is stolen. How many horses are going to get out before somebody builds a better barn. It is up to you that are in front of us here, because the Falls, as it was several years ago, was delighted to get what we

fondly called Northampton Township as part of the City of Cuyahoga Falls. In general, it is not been a bad deal. I think that Ward 8 is right for all kinds of development. Hindsight should tell all of you who have the power to do this, that unless you want to fill the chambers again and again in future years, you need to take a look at the remaining land in Cuyahoga Falls. There is not unlimited space. You need to decide what would be good for the whole community to do with that land. Otherwise, this is going to repeat itself and everything that comes along is going to be put in Ward 8. I do not understand how Mr. Boone found this obscure piece of property. It is very unpleasant to be one of four hundred voters, who live in Cuyahoga Falls and find out you have no power and no say.

Ms. White stated I just want to say that at the last committee meeting, we did officially request that the administration revisit the Land Use Plan. And we are hoping that, they are working on it and that we will have an active part in it this time.

Mrs. Hummel stated Mr. Boone responded, two weeks ago, that a Realtor from this area called them and made them aware of this property. Is that correct?

Mr. Boone stated, yes it was last Spring.

Mr. Hummel also stated, she would like you folks to know that this Council has been aware of this project for about five weeks. She stated she went through Mr. Sharpe's file on this and the City first learned of this project in a letter dated June 28, 1995. That letter was addressed to the Mayor. So this project has been

known about by the administration since June of 1995. This Council found out about it five weeks ago.

Mrs. Shoults, 3489 Prescott Circle, stated she would like to ask Mr. Boone if he chose the site and did he consider it was next to a retirement community. She stated she lived on 25th Street before and there were lots of kids. She is sorry now she left there. She stated we do not want this, you have made us very unhappy.

Mr. Bill Fenchel Jr., 3306 Kellybrook, stated "I believe the Council here has three choices. #1, you can vote for it; #2, you can vote no; and #3, we are on the verge of opening up Pandora's box. I believe we can take a little step back and look at the situation and investigate what the real law is, investigate what all of our options are and investigate what we have to do. But if you feel tonight, that you have to vote one way or the other for this it is to soon. I saw the National park, through eminent domain, take the whole Cuyahoga Valley. Maybe, there is an option there. We are the government, all these people in here. It is time we looked at all our options before opening Pandora's box.

Mr. Hinson asked if there is any time frame for the project to get its funding. Also he heard the tax credit program may be discontinued in two years.

Mr. Boone said $125,000 from Summit County is dependent upon a June 1, 1996, building permit and breaking ground. The other funding requires that they complete the project by the end of 1997.

Mr. Lowenstein stated there was a proposal to sunset the program by the end of 1997. However, Representative Archer has withdrawn that proposal.

Mr. Ron Baranchik, Pleasant Meadow, questioned heavy equipment being on the site and possibly altering the drainage. He suggested that the wetland area may have been greater before that. He stated he hears water running into a broken catch basin all the time.

Mr. Rubino concurred that he has seen the drainage problem, the high water table and the bulldozer tracks.

Mr. Sharpe stated he was out to the site with the Summit County Soil and Conservation Service. They said there is about 4,000 square feet that may or may not be a wetland, but less than one acre. One acre or more is covered by the Army Corp. of Engineers so it does not qualify as a jurisdictional wetland.

Mr. Dale Zimmerman asked about a land use plan dated 1970 that shows areas that are designated marginal use land area. Is this piece of land part of that marginal use?

Mr. Shape believes the plan was created by tri-county planning for Northampton Township. He stated the marginal areas referred to floodplain and steep grade areas. He did not feel the site was marginal use.

Mrs. Hummel asked Mr. Sharpe if he would have Mr. Ross provide us with a written report of what he saw out there today.

Mr. Sharpe stated, yes he would.

Mrs. Louise Khoury, Ash Lane, asked what I do not understand is that if the Mayor knew about this in June of 1995, how come Council did not know about this until four or five weeks ago?

Mayor Robert answered Mrs. Khoury, "Well, let me say we did get a letter back in June indicating a desire to do this kind of thing. By then, as somebody else mentioned, the cat was out of the bag because the zoning was already in place. R-17 has been in place actually in a varied form long before the merger even took place. It was R-3, but the conversion to R-17 was the equivalent. So, by then, if the term the cats been out of the bag, the cat was out of the bag even before we got any notification. And, quite frankly, we do get letters of a perfunctory nature like that rather often and we do not pay a lot of attention to it. Let me just say a couple of things though. Because, number one, I do not think the zoning is the issue. Everybody points to the zoning and says it's the R-17, it's the R-17. The issue is low income housing. That is the issue. Council just passed, a week before this came for review, an identical situation over in Ward 1. A 92 unit project, there was no outcry, there was nothing. The difference was it was not low income housing. That is the whole issue here. Density is not an issue here. Let me point out who the culprit is in this thing. I do not want to make this political and I am not going to make it

political tonight. The culprit goes back to 1991, when House Bill 339 was passed through the Ohio House. That is what set up the authorization on this. That is what set up the Ohio Housing Trust Fund. That is what created this. It would not matter how much R-17 we have in the City, because there are plenty of others, as somebody else indicated. If it is there and this thing becomes a vehicle somebody is going to come in and seize it and they are going to build on it. We can rezone everything out of here which hopefully we will be taking steps to do. House Bill 339 is what has created what we have here today. And I think as I look around this room and I see Frank Averill and Bill over there and Jerry Pribonic and a lot of other good people, the issue is that we have got people here that have built homes, condominiums, single family homes from 130 to 150 thousand dollars, and simply they do not want people moving in their back yard, that are going to be renting for $371. That is it in a nutshell. Now you can cut it any way you want, but that is to me the issue. So, where are we at. I want to thank Jerry Pribonic, she mentioned that we talked several times and we have indeed. The one thing that I keep remembering is that I said to her over and over again in meetings is, Jerry, it is probably not going to be as bad as you think it is. Finally, I said that so many times that I thought why would me or anybody else on City Council advocate anything for this City that is clearly a step backwards. And that is where I made the decision saying we have to oppose this and we have to oppose it with vigor. Now, I hear Sandy's comments and I think he is basically on target, I think he is an

attorney and he recognizes and I mentioned to everybody here two weeks ago, that the city is vulnerable to a lawsuit. There is no hiding that fact, as a matter of fact, Mr. Boone has as much as said that. But, that does not mean we rollover. We do not know, I mean, we are all sort of sitting here predetermining. We are saying, well if we oppose this, if we vote it down, which is what I recommend all council do, then Mr. Boone is going to sue. Well, first of all, we do not know that. We just assume he will. We do not know that. He may, as somebody else suggested, say, hey, I got this June 1st deadline and you talk about complexity the term Mr. Lowenstein used, the complexity of the rules. Well, we have all been struggling with the complexity of the rules. Does anybody know what the complexity of the rules all entails. I certainly do not. I have been struggling with them, the law department has been struggling with them, everybody has been struggling with them. So in terms of us trying to ascertain what will be the next move, I do not know what it is. I am not sure, Mr. Boone sitting there knows what it is. But, the reason I recommend that we turn this down is because then the ball is in Mr. Boone's court. Will he sue? I do not know. If he sues, will he win, we have all sort of rolled over on that one haven't we. We have said if he sues, certainly, he is going to win. Why? A couple things we know, if he sues, guess what we have got an in house law department. Now they get paid whether they are defending this case or if they are defending another case. Now, I am not going to pretend that we would not hire outside counsel. We may very well do that or

we will try. Of course, that will be up to City Council to decide whether they want to pay for that or not. We may use the option of going to an outside consultant, I do not know. But, we do know we have a law department to defend a lawsuit. Now, I would doubt Mr. Boone has an on staff law department to file a lawsuit. Which means what? He has to spend dollars. Well, if he has to spend dollars then he has got to make a decision as to how long does he want to pursue this thing, given the fact that we all know that somewhere along the line there is a deadline. I'll just conclude by saying it is complex, it is difficult. We have all spent two nights at least looking at who to point the finger at. I do not think we should be into finger pointing. Whether it should be R-17, whether House Bill 339 should have been created, whether someone tipped off Mr. Boone and he came in here from Columbus. You know those were all sort of ancillary to me. The issue is we have got to make a decision based on what is right for our community at this point in time. I think you have all spoke loud and clear and as Mr. Rubino said we represent all of you and you all said you do not want it in your backyard. I have advised Council, in my opinion, we should reject the thing. Let's go to court, lets see what happens. If we win, hallelujah, then we do not have to put up with it. If we lose then we have given it our best shot. And I would again plead that council do that."

Mr. Lee Minier said he had lived in Cuyahoga Falls his whole life. He has invested all the money he ever made in this town. He also stated he is very disappointed and feels we have dropped the ball. You

have disappointed a lot of people. He feels the people do not have a way out.

Mr. Richard Seaver wants to know if the zoning makes a difference. He wants to know why the zoning was not changed after the last failure. He also wants to know what guarantees do we have the zoning will be changed if this fails.

Mrs. Hummel stated Mr. Sharpe said this type of development could be built even on R-8. She stated we made the request two weeks ago to take a look at the land use plan especially to look at the parcels we need to rezone especially the gun club and Mr. Daily's.

Mrs. Beverly Smith asked Ms. White if Ward 3 is in the Woodridge School system.

Ms. White answered part of Ward 3 is in the Woodridge Schools.

Mrs. Smith stated you mentioned that your constituents would be paying for the lawsuit, if the lawsuit occurs. She stated that 100 new students from a small system like Woodridge is nothing to make light of. Our taxes are going to be raised to pay for this.

Ms. White stated, "I understand that. My actual point in mentioning that, Mrs. Smith, was that I think it is irresponsible for the administration without a legal opinion from our law department to recommend that we reject a project on no other basis than just public protest. Although, I know how important that is. And I have responded to it myself, in my own ward. We are looking at a legal basis here. The Mayor may

not care if we get sued or not but some of us do. And it could be very costly. I do not buy the argument that we have attorneys working in the law department who can do it for free and Mr. Boone has to pay for legal. You pay for it to in those attorney's salaries and everything else that happens in that law department. That was my point. I would like to have a legal opinion from that law department to show me what the administration's legal position is. There must be case law somewhere, Sandy, I do not know if you will agree with this, on cases similar to this one to see what our likelihood is of winning this law suit. I feel that is the responsible thing to do."

Mrs. Smith stated "Well, first of all, I think I am, as we all are, appalled that Council did not know about this prior to when you stated. I feel like we have been betrayed by the Administration. Voting is tomorrow, I know how I am going to vote on any new additional taxes until I find out what is resolved in this matter. I am very concerned about my taxes and the Future of the school system, as well as our property values. I am very upset by this and I hope you will all do your best to find some legal basis to reject this."

Mrs. Harrington asked Mr. Boone what were the concerns in Troy, Ohio? She wants to know do the people have the same concerns today.

Mr. Boone stated that the only complaint he has had from the city of Troy was concerning a light shining in someone's yard.

Becky DelPropost, Pleasant Meadow, stated there was a lot of digging across the road there. There was a lot of equipment there for weeks and there are exposed drain pipes. The site looks a lot different than it did a couple of years ago. She also asked who is going to serve the area as far as water and sewer.

Mrs. Hummel answered Summit County for both.

Mr. Boone stated the reason for the equipment was that they have to determine if a site is buildable. We do that by hiring an engineering firm to do test borings. He imagined that is who was out there.

Ms. White asked how many test holes were dug there.

Mr. Weatherby, the architect, stated there was a least one test hole dug for each building and two for some.

Ms. White asked what would be the reason for bulldozing.

Mr. Weatherby stated the only reason for a dozer would be to pull the boring rig in and out. He stated the problem with the site is the condition the former builder left the site in when he left.

Mr. Pribonic stated there was a boring machine back there about five weeks ago. He asked who would pay water, sewer and trash.

Mrs. Hummel stated it is paid in the rent.

Mr. Pribonic stated his taxes have gone up and he feels that taxes on this development should be much higher.

Mr. Bill Fenchel asked how far does Mr. Boone live from the nearest development like this one.

Mr. Boone stated he did not know, however he would be happy to measure it for him.

Mr. Shoults asked who is the contractor on the project and are they local or from Columbus.

Mr. Boone stated they have not chosen a contractor. There were five firms bidding, two from the Falls, one from Hudson, one from Willoughby and one from Columbus.

Mr. Wagner questioned Mr. Pribonics figure of 10,000 cubic feet of water per month for a family. He feels that figure is about six times the average family usage

Mr. Velo asked what is the average stay of a resident in one of your condos.

Mr. Boone stated it is about two years.

Mr. Velo asked do they then move on to home ownership.

Mr. Boone stated, yes sir, they usually do because it gives them a chance to save some money.

Mr. Velo stated why don't we start there. Why don't you offer it as a home ownership rather than as a rent.

Mr. Boone stated it is too late to do that at this point.

Mr. Velo stated, "you know what I know, it is not a Section 8, but Section 8 has failed. The people who are in there, they have just stayed there and they are proud of the fact that many generations have stayed there. And I do not know if these federal mandates we have are doing them any good. And I for one could have qualified for these as a young teacher. I for one was too proud to go over there. I told my wife I do not want to live there. I worked two jobs, and I am sure many of you did too. I worked with so many people's parents here. Mr. Muster, Mr. Blind, Mr. Santos, I worked with your brother. I am inclined to go along with the people that I work with and live with. You mentioned a market need. Well, that is way less than the community acceptance here. I can see that. I do not know if personally I would want to go where I was not wanted. I would not go personally. If I am not wanted I just tend to stay away. That is my personality. Are you here for the money? I am sure that has something to do with it. Are you here for the needs of the poor? I am sure. But, I do not know if we are really servicing them well. Many of these properties that we have seen the only way that you can clean them up and get out the crime, is to let them become part owner. They start policing the area themselves when they see that they have a genuine ownership. Which is what all of us have in our own personal property that we bought through the years. We have gone from cheap ones. I know that my last car cost more than my first house. I did not think that I ever could say that,

much less that I ever could afford it. And as times have gone by increases and working hard, I am glad that I did not take that first step. I would still have that mentality that I want to stay there. And I would like to see the federal government put, I wish they would, put that on the sunset review and eliminate that. I wish they would do that. Not that I do not want the poor to have a nice place to live but that is a dilemma too. All your concerns are good. All Sandy's concerns, legally it is founded. I do not know if we will spend that kind of money. Whether we should do it, I do not know. I just wonder at the next level are we really doing anybody a justice by offering them something that they really have not worked for. I could not afford a place like that when I first started teaching. I had to borrow money from my daughter's piggy bank to make the down payment at 5%. I am sure you all have similar stories. But, I just wonder what good we are really doing. Would you people really object if it was not low income housing?"

A lady stated yes, she still objected because it is going to be right in our back yard. There will be lights shining in our windows and kids running around in our yards.

Mr. Velo stated, "I do not agree with that argument, I just do not know if this is the right way. I think maybe a way to solve it would be to offer them ownership. You say it is too late, you cannot do that, but why not? There is alternative financing. There are things that you could do as the owner that would incite ownership rather than rent. That I think would

promote a better neighbor for these people, I am inclined to go along with people in the community.

Mrs. Nancy DiSalvador, Wyoga Lake Road, stated we all have the same concerns. It looks like our three acres will be the playground. There is not a tree or anything between us. She cannot understand why anyone would want to build where nobody wants you. And what is so important about those six acres? You could go anywhere else and get land, why there?

Mr. Minier state, "I do not think the issue of low income housing has ever been the issue with me. I know it has not been the issue with the people that worked on the committee. Sandy said he spent a lot of hours at it, so have we. We really do not want that there."

Mrs. Kathy Hinson, The Dales, stated she lives in a single family home. Having this multifamily dwelling in the heart of single family homes and condominiums simply is not conducive to what she thought the Falls is all about. This is not what she envisioned this area to be develop as she envisioned more single family homes. She stated it is not the children because in her area there are a lot of children. She stated this was not the lay of the land when she moved over here and she does not know if she will stay.

Mrs. Beth Jones lives in Prescott and she and her husband are both in their thirties. We pay taxes in this community and I do not think this is conducive to our community. She said they are not paying taxes like those my husband and I pay. And it really bothers her.

Jennifer Waite, Prescott, stated she is twenty-four and she is concerned about property values. She and her husband will some day move and they are concerned will they be able to sell their house with low income housing right behind us.

Mrs. Hummel stated the only way she could respond to that is we certainly cannot predict what is going to happen to your property values. That is your view and your certainly entitled to it.

Mr. Tom Conti, North Haven Blvd., asked if the plans have already been approved by the City.

Mr. Dzurilla stated the developer must submit plans for a building permit. At that time there is a city wide review of the plans for compliance with all building codes and city regulations. Those plans have not been submitted yet.

Mrs. Leslie Conti asked is there a way that those plans could be turned down.

Mrs. Hummel stated, "her understanding is that when you meet all the requirements to build a building, they will be approved. There is not basis on which to turn them down. They are not going to submit something that is not acceptable building standards. Building permit process is not a public forum. Just like if you wanted to build a house on a piece of property you owned. You would bring the plans down. There would not be any hearing like this. You would just go and get it approved."

Mr. Rubino stated, "a couple of weeks ago I brought up the prospect of making an arboretum down in that valley. I would just like to know what the consensus is among the people out there. Is that something that you would be interested in us doing, yes or no?"

An overwhelming majority applauded and said yes. (Clerk's observation)

Mrs. Hummel stated, "We have heard from the public for two hours now. I appreciate everyone's demeanor. Some of the things we have talked about have been very wide ranging and may not be right on target as far as what we are about here as far as this particular ordinance. But, I appreciate everyone's politeness and being willing to listen to everyone else. We do appreciate what you have to say. Some of us have not made up their minds yet.

Mrs. Klinger stated, "I would like to see the committee bring this out without a recommendation. We will do it pending the written legal opinion from the law department."

Mr. Schmidt stated, "I would like to respond to a number of things that have been said here this evening. I have not been swayed by Mr. Boone. I still intend to vote against this when it comes up for a vote. I have several thoughts about that, that I would like to share. In this day and age we do often times try to demonize issues in politics, nationally or whatever. The Mayor talked about Americans with Disabilities Act and talked about busing. I want to tell you the

Americans with Disabilities Act is a great law and it allows access to people with handicaps and it is a wonderful thing. It has cost money. It is probably something that should have been done a long time ago, but it is good. Busing did not seem to work. Public housing in many instances has been very successful in allowing people to rise above their particular circumstance. So, to blame Washington DC or Columbus, Ohio for what has happened right here in our city hall is not a good thing to do. And it really does not help shed any light on this issue. I think that most of the people in this room are concerned with the difference of this kind of development as opposed to what, as I have said before, is a very quiet almost retirement community. And that is the main problem here. It is not that we are not tolerant people here in Cuyahoga Falls. I almost want to tell you that I grew up in a log cabin over on the east side of Cuyahoga Falls, but we had a very difficult time and we struggled to survive. So I am very tolerant of people's struggles and I am very sympathetic, so it is not about that. It is just that it does not fit in that area in my opinion. Another issue that I would like to talk about is the fact that Mr. Boone has threatened to sue us. Mr. Boone, I have got to tell you I do not accept threats very well from you or anyone else. I am sure you are very well intentioned. And I am sure the Catholic Commission and everybody else is very well intentioned. I do not question your intentions. But, it immediately wrangles me to be threatened to be sued by a developer. And I went through this same situation. A developer threatened me and I did not budge and I was sued and

I won in the Common Pleas Court and I won in the Appeals Court. And for us to act, to vote, based on a threat from someone who comes into this room and threatens to sue us is absolutely wrong. We cannot operate as a Council in that manner. We have to draw the line somewhere and stand up to people that come in and try to do that. Lastly, we have three branches of government in the United States. We have the executive or the administrative, we have the legislative and we have the judicial. And those provide for checks and balances, as provided in the Constitution, by the founding fathers. If one branch of government makes a mistake then it is up to another branch of government to correct that mistake. So I think what you see here is democracy in action. We have the right, I believe, to vote our consciences based on feed back we get from the citizens. We are not computers sitting up here that you feed information into and it spits out an answer. We are permitted to cast a vote based on what our constituents are telling us. And if there have been mistakes made by past councils or by an administration, we have every right under the Constitution of checks and balances to correct that mistake. And then if someone feels they have been wronged they can take it to the judicial branch of government and the judicial branch of government determines the final outcome. And if that needs to happen in this case, then so be it. So I will be voting no on this and I would urge my colleagues to vote no as well. We have to listen to the people who are in this room tonight. And I have cast votes in the thirteen years I have been a member of Council that have been

very unpopular to some people. I voted for Twin-Value on Howe Ave. And I am still to this day receiving flack. So, it is not that I am afraid to cast a vote that might be viewed as unpopular. I think that we do need to listen in this instance, to all the evidence and to the people who live in that area now and to not succumb to threats of a lawsuit by Mr. Boone from Franklin County, Ohio. And I urge all my colleagues to vote no. Thank you."

Mr. Bedell stated, "I guess I would just like to follow what Mr. Schmidt just talked about and that is lawsuits that are generated by developers at this level. As it exists right now we heard comments from citizens that are in the area and comments form Council, Mr. Rubino in particular, as to what ramifications would take place. The oath that we took to do what is Constitutionally correct, to do what you want us to do, we have to do right. If it is written, as it is today, if all the conditions are met, the developer can say hey!, I met them, by law I get it, I can put that thing there. Maybe we have to change that. Maybe we have to say, lets put something in there so we can say something. It just seems like there is a frustration, there is a wall. You are trying to help, you are trying to help us and everyone is trying to do right. That does not exist today. The developer can come in and say I am doing everything I am supposed to do and if you do not let me do it, then I have the right to sue you. That needs to be looked at. We have to consider everything that has been done up to this point. I guess there is at least one question that I have for Mr. Boone. Is the 72 units cast in concrete?"

Mr. Boone answered, yes.

Mr. Bedell stated, "I know as a council representative, I have been taking notes, gathering information and I have not made a decision to vote yes or no on it. But come time to vote on it, I will make a decision. Taking into account everything that has been said tonight."

Mrs. Hummel stated she concurs with Mrs. Klinger to bring this out without a recommendation pending a legal opinion from the law department. She stated Mr. Rubino will be out of town next week. It is her intention to vote on this at a special council meeting on April I, 1996. She feels that it is important to have the nine remaining councilors present to vote on this ordinance.

The Committee was in favor of this recommendation.

The meeting was adjourned at 8:45 p.m.

[The Following Minutes Appear as an Attachment to the Plaintiffs' Supplemental Brief in the District Court Record at Document No. 173]

CUYAHOGA FALLS CITY COUNCIL
PLANNING AND ZONING
COMMITTEE MEETING

March 4, 1996

MINUTES

On March 4, 1996 a meeting of the Cuyahoga Falls City Council, Planning and Zoning Committee was held in City Council Chambers, the Municipal Building, 2310 Second Street, Cuyahoga Falls, Ohio at 6:58 p.m.

MEMBERS Mrs. Hummel, Chairman
Mr. Schmidt
Mrs. Klinger

Mrs. Hummel called the meeting to order at 6:58 p.m.

The minutes of the February 20, 1996 meeting were approved.

LEGISLATION CONSIDERED

Temporary Ordinance A-3 - Amend zoning regulations - R-1 Agricultural and Rural Residential and Single Family.

Temporary Ordinance A-39 - Approve plan for development - 72 unit apartment complex in the 300 block of Pleasant Meadow Blvd.

DISCUSSION

A-3 - Mr. Sharpe stated that the ordinance raised the lot size to 1.5 acres in the R-I. Mr. Sharpe addressed the questions brought up at the public hearing last Monday evening. He then asked if there were any further questions.

Mr. Ports stated this ordinance will help maintain a rural character at least in the area North of Steels Corners Road. Secondly, he feels the ordinance will help with getting septic approval.

Mrs. Hummel noted that one of the biggest differences she noticed was the large increase in the minimum house size.

Mrs. Loudin wants to know if this is all of R-1 or just North of Steels Corners Road.

Mrs. Hummel stated it referred to all R-1 lots.

Mrs. Harrington asked what happened if you sold your one acre lot. Would it still be a legal lot?

Mrs. Hummel stated yes it would remain a legal lot.

The Committee recommended A-3 be brought out for approval.

A-39 - Mr. Sharpe stated that he was there to present the site plan in relation to the zoning code requirements. He first described the location of the project and the zoning history of the site. This plan meets or exceeds all the requirements of the zoning code. The plan was recommended for approval by the Planning Commission with nine stipulations.

Mr. Steve Boone representing the developer stated that he met many of you at the meeting last week. Since that time Mayor Robart, Chief Smith and Mr. Sharpe had visited their oldest development in Troy, Ohio. They went through the project and he felt they all came away happy. He stated this is not a Section 8 housing.

Mrs. Hummel stated that Mr. Leipply and Mr. Potts would probably not be voting on this ordinance. Mr. Leipply has a residence in the area and Mr. Potts has a reservation on a lot. Under Council's conflict of interest ethics legislation, they raised the issue last week. Council did vote that they both have the potential for a conflict of interest. Mr. Ports may make some comments as a resident.

Mr. Bill Suren, 388 Village Court, asked who would be representing the residents with a vote.

Mrs. Hummel stated the other two councilman-at-large would be, herself and Mr. Rubino.

Mr. Suren felt by the two councilman not voting it would jeopardize their position.

Mrs. Hummel stated she felt it did not. In order for the legislation to pass it must be approved by six members of council.

Mr. Suren asked about the emergency clause.

Mr. Kennedy stated most of the City's legislation has the emergency clause. This enables the legislation to take effect when the Mayor signs it if it receives a

2/3 affirmative vote from Council. It does not inhibit the public's right to initiate a referendum.

Martha Shoults, 3489 East Prescott Circle, wants to know if there will be a manager on site for this development all of the time, 24 hours a day.

Mr. Boone stated certainly that is our preference.

Mrs. Shoults stated that does not answer my question.

Mrs. Hummel asked Mr. Boone if he wanted to change that to a yes.

Mr. Boone stated yes.

Mr. Larry Hart, 3479 East Prescott, does not feel that a five foot fence is a sufficient buffer between a retirement community and a 72 unit apartment complex with over 100 children. He feels they are not compatible life styles.

Mr. Sharpe explained the grading and the buffer.

Mrs. Debbie Rich, 24th Street, stated if this is not a Section 8 housing then what is it? How much is the rent?

Mr. Boone stated the rent for a three bedroom apartment, a net rent that does not include utilities is $457.00. A two bedroom is $370.00 plus utilities.

Mr. Jim Menough, 379 Pleasant Meadow Blvd, wants to know what kind of buffer will be provided for them. They are owners not renters.

Mrs. Hummel stated the site plan provided for a buffer on one side only.

Mr. Larry Dean, 3520 Wyoga Lake Road, wants to know what affect all these apartments will have on the wells in the area.

Mr. Sharpe stated no affect.

Mrs. Patricia Ryan, 318 Firwood, asked where did you come up with the income guidelines.

Mr. Boone stated the guidelines were set by the Internal Revenue Service who is providing the tax credit.

Mary Jane Pappano, 355 Village Court asked about the minimum and maximum. What happens to people that lose their job and what is the impact on the Woodridge School District?

Mr. Boone stated the minimum and maximums are part of the lease, if they violate the lease they will have to leave.

Mrs. Hummel stated that Dr. Clapp was at the Planning Commission meeting and had stated that this density was not factored into their enrollment projections.

Dr. Ranjit Gupta, who owns 311-329 the apartment building directly across the street on Pleasant Meadow Blvd, feels with these rents his building will lose tenants. He feels it would completely devastate his investment.

Mr. Dean Taylor, 69 Paddison Ave., feels these people do not pay taxes and says what is keeping his children from going to this unsupervised playground.

Mrs. Hummel stated that the playground will be part of a private development and that if his children were there he as a parent should be supervising them.

Mr. Don Bridenthal, 3537 Wyoga Lake Road, is concerned about the increased traffic on an already crowded street.

Mr. Sharpe stated the impact on Wyoga Lake Road should not be significant.

Mr. Bridenthal stated he did feel it would be a traffic problem.

Mr. Sharpe stated there will be additional cars.

Mrs. Hummel asked Mr. Sharpe to explain the tax evaluation that he handed to her.

Mr. Sharpe stated that the development would pay $62,543 a year in property taxes, $33,680 of which would go to the Woodridge Schools.

Ms. Becky Del Propost, 373 Pleasant Meadow Bird, has lived there for five years. She feels safe where she is and worries about her property value. She asks Council not to vote for this development.

Mr. Ron Baranchik, 383 Pleasant Meadow Blvd., wants to know how will a school bus turn around on this road. He states a snow plow cannot turn around.

Mr. Lee Minier, 3404 Prescott Circle Stated he has lived there four years. Most people there have paid $100 - $150 thousand for their houses. With all the upscale housing in the area, why are we even considering this type of development.

Mrs. Hummel answered because it is zoned R-17 and there was an application made to the Planning Department.

Mr. Minier is also concerned about this development spilling down the road and including the Gun Club property, which is also zoned R-17. He feels somebody may have dropped the ball somewhere along the line that was a mistake. Do not compound it by making a second mistake approving this.

Mrs. Lisa Rocko, 106 Timothy Ave., is concerned about the educational quality in the Woodridge School District. She worries about class size with this influx of children.

Mr. Sharpe stated that this project is being built to a standard of units that rent for $1,000 - there is no difference in construction. Through a series of laws at the federal and state levels the federal income tax code was amended. These tax credits are designed to provide housing for people that are working and cannot afford to live in the area.

Scott Del Propost, 373 Pleasant Meadow Blvd., wants to know how the city justifies putting 300 people on six acres of land.

Mrs. Hummel stated R-17 allows for a density of 17 units per acre. This project is being developed at a density of 11.4 units per acre.

Mrs. Pribonic, 3485 East Prescott Circle, states that they plan on retiring there. Mr. Sharpe states that their property values will not go down. She says they already have.

Mr. Schmidt feels the people affected by this are compassionate people. He feels the concern is that they have a quiet retirement community and what you are going to do is put something next to it that is completely different than what is there now. This is what their concern is and he feels it is a valid concern.

Mrs. Matuska, 3530 Prescott Circle States that there are too many school buses with Walsh, CVCA and Woodridge buses now, along with the developments.

Mr. Don Whitely, 3477 East Prescott, asks in as much as we have not discovered if school buses can get in and out of there, will this be sent back to the Planning Commission prior to approval.

Mrs. Hummel stated that it is her understanding that it would not be.

Mr. Sharpe stated that there was a 23' wide corridor through the parking area.

Mrs. Gupta stated that their apartment building pays $20,000 in taxes. She wants to know how much taxes is the development going to pay.

Mrs. Hummel stated Mr. Sharpe said the taxes would be $82,500.

Mrs. Gupta said that is for 72 apartments.

Mr. Frank Pribonic, 3485 Prescott Circle, stated that it was said that property values would not decrease because of this project. VVhitlatch Homes has decreased the price of their new homes by $10,000 in the past two weeks.

Mr. Bill Fenchel Jr., 3306 Kellybrook Ave., asked Mrs. Hummel since she was the council person-at-large, with all these constituents here that are voters, how are you going to vote on this.

Mrs. Hummel stated she will make her vote on this next Monday night.

Mrs. Lesley Conti, 2584 North Haven Blvd., says it is her understanding that the average income to move into these apartments is about $20,000. What is the most they can make and live there.

Mr. Boone stated it depends on the number of people in the family. The highest income for a family of four is $36,000. He also stated the maximum number of people he thought was 2 per bedroom.

Beverly Smith, 3398 Hunter Parkwey, said we are not just concerned about this, we are opposed to this. She does not want this in her back yard. We went the councilman to vote against this.

Karen Hayes-Brouse, 3364 Hunter Parkway, stated she is one of the ones who passed the petitions. She

says they have 432 signatures as of this morning and they have a large area they have not hit yet..

Mrs. Miriam Krausman, 3422 Wyoga Lake Road, says she voted for the merger but if she had known this, she would not have. She did not know what R-17 meant. Next time put it in plain English.

Dr. Richard Clapp, superintendent of Woodridge Schools, has checked with their consultants that did their enrollment projections. They were expecting no more than 42 students from that area. Obviously, we have heard here tonight that we could get 130 plus students. Not only are we concerned about this project but also the other R-17 acreage down there that is not spoken for. If all that were to go this direction the projects we have done would not be sufficient to house the students we would get from that area. This would place a burden on all of the taxpayers in Ward 8 which is not in our plan for the long range.

Mrs. Hummel said there was one other question raised about the school buses.

Dr. Clapp said that was shared with him and he did not have the answer. He would need to check with his transportation supervisor.

Mrs. Hummel said the lanes are 23' with the cars parked. However you have an in and out.

Dr. Clapp said it appears to him the way it is drawn that the turning radius may not be sufficient.

Mr. John Daily, Pleasant Meadow, says he owns the property adjoining the development. It was zoned R-17

approximately twenty years ago because it was a buffer between the residential and the industrial area. It has been that way for a long time. In the last twenty years it has been built on a piece at a time. He thinks that most of the concerns here are not that it is high density but the fact that maybe we should stop building in the area altogether. Most of the arguments are saying we will have too many kids in the school. Well if you build houses your going to have more kids. It does not matter what kind of houses you build, your going to have more kids. He thinks most of the argument seems to be that it is federally subsidized housing and that creates a problem in his opinion. He does not care if it is federally subsidized or not. He thinks a-lot of statutes tell him you cannot stop that kind of thing. If this were not subsidized most of the arguments go right out the window. He thinks we really have ourselves in a problem when we say we will have high density but high density on my terms. If we had building in Northampton on his terms all these people would not be living here. He would not let them build anything. So the fact is you have progress and you are going to put in high density. He is selling his property eventually because he wants lower density where he lives. That is a choice you make and a choice each person goes along with. When they make the commitment it is going to be a higher density situation, then it is going to be, and you have to make it viable for however many people they stuff into that area. His personal opinion is that the condominiums stuck too many people in them. That is the way the world goes around. If you take these arguments, then

you cannot develop anywhere in Northampton. Well if Woodridge has enough students, we will stop there. That would be fine but try to sell that. People have land they are going to sell and develop and it is going to happen. Unfortunately, we are going to have more and more people on this earth and they are going to build houses. Now the question is - is the argument the fact that we are growing or the fact that we have a subsidized housing project. His opinion is that the arguments here are all because we have a subsidized housing project going in. He is not happy with this either, to be honest with you, but they are a fact of life and unfortunately they are a statutory part of life. There are certain prejudices we are not allowed to have any more to be politically correct. He thinks you have to take into consideration, yes we are going to grow, yes we are going to have more students and more houses. We are going to have more people. Now the question is once you say that, when do you say stop to this guy and go ahead to this guy. It is O.K. for you guys to build and it is not O.K. for you guys to build. He does not think you can do that and that is the problem he sees with it. if he was building this project and it was not federally subsidized, would everybody be upset? He does not think so. So to him your looking at a question and really an ethical question. Does development stop as soon as somebody mentions the awful word of federal subsidy. He does not think you can do that. That is his point and he thinks you should let them go with it.

Ann Bridges, 3125 Rice Road, is concerned about the extra crime and drugs that come with low development housing.

Kay Whitehead, 3490 East Prescott, asked Dr. Clapp if this development is private property. Would not the pickup be on Wyoga Lake Road?

Dr. Clapp said either that or a turn around so that we did not have to go in.

Mr. DeSaovatore, 3510 Wyoga Lake Blvd, says his property abuts this whole abomination to the East. Why are we not given the same consideration as far as setback trees and fences as Prescott. We are not trash on Wyoga Lake Road.

Mr. Dale Zimmerman, 3382 Board Drive, said the issue that was just in front of the board was to make the R-1 more rural. He feels we need to re-evaluate the land use plan.

Mrs. Hummel agrees we need to review the zoning in Ward 8.

Mrs. Ann Houston, Prescott Circle, asks is it guaranteed by the ownership that the project will stay under the same low rent program.

Mr. Boone says the state administers the rules for 30 years by a restrictive covenant.

Mr. Houston asked how old is your oldest project and is that the one the Mayor went to see?

Mr. Boone said it was 2 ½ years old and it was the one they went to see.

Mr. Ron Baranchik, 383 Pleasant Meadow Blvd., asked did they ever look at the possibility of a senior citizen's complex. He feels it would be more compatible.

Mr. Boone says they cannot change the way they applied for the credits.

Mr. David Willett, the Dales, says he heard the average income was $30,000 in Cuyahoga Falls. If all these folks managed to live in Cuyahoga Faits without a subsidy, why do we need a housing development where they are going to be making $30,000 and getting a subsidy? Try to find a community that wants this. Nobody wants this thing.

Mr. Wayne Jones said he was there for the E-Check meeting. However, there is one thing he would like to correct that Mr. Sharpe said. This is not a state program. It is a state administered program. It was mandated by the federal government. We had no vote on it in Columbus.

Mr. Sharpe stated you created the Public Housing Finance Agency.

Mr. Jones said it was on the ballot. The voters in Ohio approved the public housing aspect of it. The state legislature did not approve the implementation of this. It was from the federal regulations.

Mr. Sharpe stated it was his understanding when the Ohio Housing Finance Agency was created the first thing they did was make loans available to Ohio Savings here in the Falls for anybody who wanted to

buy a house. And they wrote down the interest on it. The state legislature got involved after the Federal Housing Tax Credit Program evolved and they created a separate finance agency under the umbrella allowing a non profit to administer these. But this was created at the legislative level of the state of Ohio.

Mr. Jones stated he was not going to argue. With regard to the Woodridge School System, we have about 1,100 students right now. With the number he heard, 134 students would be a 12% increase in the school population. The taxes will provide about $225.00 per student. The Woodridge System spends about $5,800 per student. Where is that difference going to get made up. He is somewhat offended by someone preaching about low income housing. They make you feel like this is to help poor people. This is simply true and fact about making money. The fact is he is here to make money and he is doing it in the name of poor people. I am telling you right now when the merger between Northampton and Cuyahoga Falls took place there were supposed to be one acre lots. Now there is some other zoning that I know took place that was less than that and that is O.K. I will guarantee you if there were units that were on one acre lots you would not have this problem. The problem is condensing these individuals in one place like Prange Drive. It just breeds problems. I think it is a legitimate concern. You say you cannot do anything about it. I feel that is unfair to the people who came down here.

Mr. Don Hinson, Patterson Ave., asked Mr. Boone about the project in Troy, Ohio. He wants to know what the crime rate is.

Chief Smith talked to the Chief in Troy. He asked him about the crime rate. He said it was not any worse than any other development. Chief Smith said he had a print out of incidents reported to the Troy Police in 1995. There were 155 incidents reported mostly minor up to one felony which was a burglary.

Mr. Hinson commented they were here to ask Council to vote it down and that is it plain and simple.

Mr. Frank Averill, 3484 Prescott Circle, said we all know what the opinion of the people is here. Now when do we get this resolved?

Mrs. Hummel stated there will be a vote next week.

Joyce Harrington, Wyoga *Lake* Road, said she is against any development right now. She is concerned about the sewer which runs right through her yard and she has sink holes in her yard. Also she is concerned about the safety forces.

A gentlemen questioned what happens to the lower area where the gun club is located. Will there be roads tied into Prescott Green. Also there has been discussion about turning the area into a park. Is that being considered?

Mrs. Hummel stated there is talk about rezoning and the possibility of a park being considered.

Marion Grove, Prescott Circle, stated she has been a widow for thirty years and she pays $2,000 a year in taxes and if they raise them she will not be able to pay.

David Jones, 3518 Prescott Circle, says he has been offended by hearing he has no sympathy for hard working people in machine shops. And the other gentleman saying we were not politically correct and could not vote against it. He feels we can. We are the voters and we are the ones who pay the taxes in this community. We voted you people in so hopefully you people will do the right thing.

Mrs. Hummel stated she would like to thank everyone for being cooperative. You have kept your comments relatively short. We all appreciate your coming down here and letting us know how you feel. And you are exactly right, we are your representatives.

Mayor Robart thanked everyone for coming out. I look around the room and I see a lot of people that had single family homes in the Falls. They sold them and moved into the condominiums. They are the real heartbeat of the community. Most of the people that came out tonight 90 - 95% of them were here because of E-check and this low income tax credit. Two federal programs that were listed on the state, as Wayne said and subsequently on the local governments. I point that out, because in George's memo, that came out to you. It sort of implied as though we at the local government have some control to turn this thing around. I really question whether we do or not. I know no one likes to hear Mr. Daily's comment, but when I get done, maybe you will see what I am talking about.

All these federal programs clean air, clean water, aid to the disabled, all the housing programs that came down from on high. They are all great. We read about them in the paper. They are big headlines. Clean air passed and we all say that is wonderful. But what we do not realize is what is the impact on us on the state and the local level. I want to tell you ladies and gentlemen, the impact is tremendous. Whether it is dollars and cents or whether it is a change to the social landscape, it is a significant change, to every one of us and sometimes we all do not realize it but believe me I have been working with Council and the budget for the last ten years. Every time one of these comes in, it is a heavy hit on this city. Mr. Snyder, when he talked about the E-check, used the word duped and we all kind of laughed. I would use the word extortion, because when the federal government brings something down from on high, we really do not have anything to say about it. It is done. The reason I say that is here in Cuyahoga Falls, we get about $2,750,000 from the federal government. We get that in the form of bridge repair, highway repair, resurfacing, different grants, CBG, police grant awards and the HEAP fund. All these things are federal funds that we get and if we do not comply with what the federal government sends down, that money is taken away. Now we can all sit here and say it is not worth it. Give the money back and believe me we have all thought of it. But that is a lot of money and when we run into these obstacles, usually it is what do you do now. I do not know of a city that has turned the money down and not imposed these changes. The reason that I say that we as local

officials probably do not have as much control as everybody in this room thinks we do is because the reality is we can all be sued. We can be sued as a city. We can be sued individually in our individual capacities. We can be sued as administration and city council and in the end, if we are, the reality is we are probably going to lose. Now I know nobody in this room wants to hear that but that is the reality. We are probably going to lose. Because the program was set up by the feds, it was sent down to the state and it was dropped on us and we can either work through it or forget it. Now where does that leave us? I got a letter from Brenda Wetlon. I do not know if she is here tonight, saying she would oppose anyone voting for this. The reality is that the frustration is probably misdirected. There is not anybody on this Council that voted for that and there is not anyone is this administration that did. We are stuck with it and we are going to try to work through it the best we can. I noticed in the paper today and some of you might have read it. There was an article called "Stuck in the Getto". It talked about subsidized housing, section 8 housing and it talked about problems associated with it. If you read it, it said, the proponents of subsidized housing want to put the low income people out into the suburbs. We do not have enough of them in the suburbs. They have too many of them in Akron. Part of the theme was, we in Cuyahoga Falls, Tallmadge and Stow and some of the other suburbs ought to have more subsidized housing. Well the reality folks is, we have done our part. We have done are part off of

Graham Road. We are all aware of that. We have done our part in scattered housing.

In the ten years I have been Mayor, whether I like to admit it at this point or not we have not turned down one project in the City of Cuyahoga Falls. So anybody that wants to paint us as bigots or anything else, is flat out wrong. We have played our part and we have played it to the fullest. If you ask Tony O'Leary, who was quoted in the paper today, he will tell you the answer is not moving them out into the suburbs. He is saying lets just upgrade what we have. That brings me to my final point. If there is this money available, this pot of gold somewhere that the federal government is putting out there, why don't we take that money and ship it down into the existing sections that is already there, that they claim is not good enough to live in and lets upgrade it. Lord knows that the social engineers back twenty or twenty-five years ago brought us busing. That was a wonderful project up in Cleveland, wasn't it? We all now know that Cleveland has the worst school district probably in the country. We went down that road, didn't we? Let me close by saying this. I think we are going down the track to fast. This thing was just brought to Council. It went through the Planning Commission. Everything is going to fast. I think there are legitimate concerns. First of all, we have Dick Clapp here tonight. He is raising concerns about the schools. Wayne Jones said the same thing. I think he is right. I think we need to look at that. The other thing is we talked about a feasibility study. Has anybody seen a feasibility study? Have we looked at it? Have we dissected it? Do we know what is in it? With

the addition of this project, it has been suggested it would depreciate values in the Falls. Is that true or isn't it. We can find those things out. We can look at other cities where similar situations have happened. What happened to the surrounding housing stock. Did it depreciate or didn't it? It is not something that is speculative. It is fact. Let us look at that. And what is the impact on Cuyahoga Falls for police and fire? What is the impact? Do we know?. One of the things we observed and I will throw this out, the Chief tried to explain this situation and it's a very confusing situation in terms of subsidized housing. We have all read the police blotter. We all know the number of calls that come out of Prange Drive and some of the other places. What that translates to is the bad news that we do have a disproportionate amount of calls in there for disorderliness and domestics and things of that nature. The good news is, almost without fail, it is self contained and it does not spill out into the neighborhood. If you do not believe me ask the people in Camden Knolls. They will tell you the same thing. That is the good news, but what does that mean in terms of a barrier. I have heard suggestions of five foot fences not being big enough. The other side of the coin is if you put a fence higher than that it creates ill feelings in a community. So is the five foot right? I don't know but I believe we need to look at that. In the end, I am suggesting, Kathy, that I realize everybody is on the spot on this ordinance and it is hot in here. I suggest that we table it and that we begin meeting in smaller groups where everyone can truly vent their feelings, so that, we can get to the hub of the issues.

We can discuss them one on one, two on one, whatever it takes to get every possible issue out on the table and reconciled. Then at that point, whether it be two weeks, a month, I don't know how long it will take. The thing is, I don't know how many meetings it will take. At that point, if we still have what is probably the largest, turnout ever since I have been around the City, I say we turn it down. I say we go to court, maybe we win, maybe we lose, but at least we will have done everything we possibly can to make sure we are doing the right thing at this time.

Mr. Schmidt said he would like to respond to some of what the Mayor said. You know it is very politically popular now a days to demonize every issue in America. We see it on the national level and we see it on the local level. Basically you missed the point Mayor. This is not an issue about subsidized housing, about American's with disabilities act, about busing or about anything else. The issue is about how did that vacant tract of land get zoned R-17 and remain zoned R-17 next to what is basically a retirement community. Who dropped the ball here at Cuyahoga Falls City Hall. I take umbrage at you sir for talking about subsidized housing. I tell you, I came from a working poor family. My father died when I was eleven years old and my mother raised four kids and worked full time. So, I have compassion for working families. Our family rose above so I have a lot of compassion. That is not what this is about. This is about density next to a retirement community basically and its about compatibility. And somebody here at City Hall dropped the ball on that and this is a wake up call for

the planning department and the administration of the City of Cuyahoga Falls to look at other vacant tracts of land and make sure this situation does not happen again.

Ms. White stated I would like to follow up on Mr. Schmidt's comments. He echoes my sentiments completely. What I would like to ask the Planning Department for now that we are at this place, is some kind of a report that tells us how many acres of developable land are left in the city, divided by residential, industrial and commercial. A large map that we can look at because you know we had 138 development projects go through Council in the last four years. Once we dispense of it, it is hard for me to visualize when the next one comes in what we are talking about, what is left, what the zoning is in the adjoining areas and so forth. Is it possible for us to get that from you so that we can have it with us, when we discuss planning issues? Especially in regard to Ward 8, because I think that we need to step back and take a breather and see where we are. Maybe, revisit the land use plan. Let's just talk about it in earnest now, O.K.? Thanks.

Mr. Potts stated that he can lay claim to being involved in this longer than anyone. He has been involved for nineteen years in the old township. It was a conditional zoning which meant the appeals board could set conditions on what kind of development went in here and how it was put together. Something that we cannot do with the R-17. I think we pretty will have to do it by the book. In the merger we took the R-

3 zoning and simply combined it with the R-17 in the City. In 1986 we took a look at this area and the area was added to the R-17. He feels that Council needs to take a look at rezoning the adjacent parcels and maybe even the parcel we are looking at tonight. He feels the area needs to be compatible with the existing developments.

Mr. Rubino stated he was out to Prescott Common to the guardrail at the end of Hunter Parkway. He was awestruck at the natural beauty of what he saw down in the Mud Brook Valley. As he was perched, looking down into the valley, he noticed that Mud Brook snakes its way through a wooded area through Mr. Daily's property and through the Gun Club property. The topography around there with its bordering wooded hills, the escarpment behind the Gun Club area and the creek itself revealed something quite apart from the site plan we are contemplating tonight. He started wondering why we were talking about developing these three R-17 sites at all. What he saw was one of the most beautiful areas in the City of Cuyahoga Falls that close to the central city, both Ward 5 and Ward 8. We do not have a lot of green space left in the old city and this is like two miles from where your sitting tonight. He immediately thought that this area should be reserved for the people of Cuyahoga Falls and become a quiet contemplative type of park, perhaps an arboretum. Something for everyone to share. The idea of putting apartment buildings all through that valley started to become repugnant to me. He watched a red tailed hawk and five deer walk across the escarpment. He knows we

need a city wide land use plan, one that is balanced between development and preserving green areas. "I know that the City has a lot to offer, as far as land that is available, and developers are ready to gobble it up. Let's face it folks the beast is hungry. I don't have a problem with business or capitalism. I fancy myself in the same mold. Nor does he have a problem with us expanding our tax base in certain areas of Ward 8 to help all of us from paying 4% income tax someday. I do believe however that we need to look at the Mud Brook Valley and decide as a people if developing these sites enhances our overall quality of life and preserves the best of what the Falls has to offer in natural beauty. I believe we owe it to ourselves and our posterity quite frankly, to reflect upon this entire area and potential development there as to whether this development is in the best interest of Cuyahoga Falls residents. Once bulldozers start, it is too late. I do not know whether we can afford to have a park there. I do know this, I think we should seriously start looking to that and putting it in the public trust and possibly talking to Mr. Daily, the Gun Club and Mr. Boone and seeing if the City can purchase those properties. Once again, I do not know if we can afford it and I am not sure that we can afford not to. So, I am kind of asking this Council and the Administration to study what I have proposed in an expeditious manner. The site plan, that we are studying tonight is separate and apart from what I am bringing to the forefront tonight, but I would like us to seriously consider preserving a lot of this area. I have heard that the City has been acquiring reservations running along Mud Brook and

I am thinking that someone had already anticipated making that into some sort of benefit to the people of Cuyahoga Falls, in the terms of some kind of walkway or whatever. I would like to ask Lou Sharpe at this time if I am right in my assumption? Also would a park in that area fit into our current land use plan?"

Mr. Sharpe stated we have been actively involved in that. In fact we have acquired all of the land in the Mud Brook flood plain. It is currently owned by the City or covered by scenic easement with the exception of Mr. Daily's property, the Gun Club property and this property. I have seen that area evolving similar to what happened on the west side of Cuyahoga Falls at Bah Run. I would strongly support your efforts to acquire the Gun Club property and Mr. Daily's property because that would provide us with a staging area and maybe a picnic area, for a hiking trail along the creek. We have had discussions with Mr. Hunter about acquiring the Old Mill pond or the land around it. With the long range goal of someday when the Parks Department finishes with Kaiser, we would be able to say we have this little gem that we have been saving for you. It is certainly something that we have begun working on and we have got it for nothing up to this point.

Mr. Rubino stated he is a bit of a history buff. Pontiac, who was an Ottawa Chief, had a village on the Herbruck farm on Portage Trail. He was visualizing as he was looking down on the creek the other day, Pontiac and his tribesman walking along the creek. I

think now about what we are about to have there and he feels he would rather have the Indians.

Mr. Bedell asked if a builder has been selected.

Mr. Boone said no.

Mr. Velo asked how close is this development to Prescott.

Mr. Sharpe stated 80 feet.

Mr. Velo stated the dialogue has been wonderful. He stated with all the questions we have, it would be foolish to go on with this or approve it. He does not appreciate being threatened about not being voted for. He would rather listen to your complaints than the threats. He thinks that issue needs to be held or turned down. He thinks he would like to see our whole zoning restudied as we said and he thinks Mr. Sharpe had his hands tied. Maybe he is doing what he feels we have to do. If he is doing that then he is doing his job. If it came from the state or the federal, lets not point fingers lets just try to resolve it.

Mr. Usberghi appreciates everyone being here and making the comments they made. I think it tells us as a Council how you feel. I think everyone on this Council should think about this and they should vote the right way. There are a lot of other issues that could be explored with this land. I agree with Mr. Rubino and I agree with Mr. Velo that we should look at rezoning. Obviously, we cannot look at this piece of property right now. The adjacent properties we can and I suggest we do it as soon as possible..

Mrs. Hummel stated, based on the comments she heard around the rail, her preference was to hold this. We have had two particular issues raised. The school buses and the park issue. I think that is something legitimate that we all need to think about. The Mayor has raised some other issues that he would like to see addressed. So. my inclination is to hold it if that is acceptable to the Committee.

Mr. Schmidt said be was in favor of bringing it out, voting on it and being done with it.

Mrs. Klinger feels it is prudent to do further study.

Mrs. Hummel agrees with Mrs. Klinger. What the plan will be folks, just so you know, I told Mr. Fenchel I would be voting next Monday night. I will not be voting next Monday night. The normal course would be for this to be heard again in Committee. We will do some research on some of the issues that have been raised tonight and we will hear this again in Committee two weeks from tonight, March 18. I assure you, you are all welcome to come back again. I assure you, you do not need to come back again. I think we have got your message. I suggest that you send representatives so that you are all informed, but you are all welcome to come back. The normal course would be for us to vote on this if it is reported out of Committee on March 25th. However, Mr. Rubino is going to be out of town and he has expressed to me that he would like to vote on this. So, I do not know that it will be brought out on the 18th - based on Mr. Rubino's request that he be here to vote. No action will take place on this until March 18th.

The meeting was adjourned at 9:28 p.m.

[The Following Appears as an Exhibit In The District Court Record at Document No. 174]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

CASE NO. 5:96 CV 1458

[FILED AUGUST 21, 1998]

BUCKEYE COMMUNITY HOPE FOUNDATION et al Plaintiffs	)
-VS-	)
CITY OF CUYAHOGA FALLS et al. Defendants	)

JUDGE BELL

STATE OF OHIO)
)SS:
COUNTY OF FRANKLIN)

I, P. Gilbertson Bamo, being first duly sworn upon oath, depose and say:

1. I am the Executive Director of Buckeye Community Hope Foundation, one of the named plaintiffs in the above-captioned case, and am familiar with the details of our proposed

72-unit apartment development on Pleasant Meadows Boulevard in Cuyahoga Falls, Ohio.

2. At the current time, there is no certainty that we will be able to proceed with this development.

3. Since we initially filed for a building permit, because of the time delays we have suffered as a result of the acts of the defendants, we have had to return to the Ohio Housing Finance Agency the low income housing tax credits which were to form the major basis of our funding for this project.

4. These tax credits would have had to be used by the end of 1997, and were thus worthless to us because the project had not been completed by that time.

5. While it is possible that we may be able to secure new tax credits to replace those which were returned, there is no guarantee that we will be successful in this attempt. The Ohio Housing Finance Agency has discretion to issue noncompetitive tax credits to projects which had been competitively awarded tax credits in prior years, but which were unable to proceed due to governmental action which has been judicially determined to have been improper.

6. We intend to apply for tax credits under this provision of the State's Tax Credit Allocation Plan, but there is absolutely no guarantee that we will be able to secure new tax credits to replace those which were lost.

7. Without the issuance of new tax credits, we will be unable to build our development unless the lost funding is reimbursed by damages assessed against the City of Cuyahoga Falls.

8. Because of the delays we have suffered from the acts of the defendants, we have lost our construction loan commitment. Prior to securing a new construction loan commitment, our construction costs must be re-estimated, and we must determine if the project has been rendered not feasible because of the increase in construction costs which arose during the period that construction has been delayed.

9. As part of this process, we must determine if our sources of funding are sufficient to meet the increased uses of that funding. We must also determine how much bigger our permanent loan will have to be to meet the burden of the higher construction costs, and if the rent structure to which we have committed for this project will support the resulting increase in our debt service.

10. In short, prior to securing a construction loan commitment, the entire project will have to be underwritten anew.

11. The contractor for this project is currently re-assessing what the construction costs will be. It is not until matters have developed to the point where we have found out if we have been awarded non-competitive tax credits and are thus actually able to begin the formal

underwriting process that we will be able to determine with certainty the feasibility of our project and if we will be able to secure a new construction loan.

12. When we initially filed our State action against the City of Cuyahoga Falls, we chose to file a declaratory judgment action for two reasons: we hoped to secure a judicial determination of our legal rights before suffering serious damage from the City's actions; and *we had no damages* at that point which might form the basis for a compensatory suit.

13. It was not until the delays in construction reached the point that construction costs began to rise, that interest rates began to rise, that we suffered unexpected carrying costs on our land, and that we were unable to compete for future years' tax credits, that we developed damages sufficient to sustain an action for monetary recompense. By that time, the trial court's decision in our State case had already been issued. Thus, we *could not* have brought an action for damages at the time of our State case.

FURTHER AFFIANT SAYETH NOUGHT

SWORN TO BEFORE ME and subscribed in my presence at Gahanna, Ohio, this 21st day of August, 1998.

/s/_____
Carolyn M. Sell
Notary Public, State of Ohio

[Selected Pages from the Transcript of the Preliminary Injunction Hearing Dated November 19-21, 1996, Appearing in the District Court Record at Documents 70, 71, and 72]

***

[Testimony of Louis Sharpe]

[P. 144] ...permit.

Q. And did you contribute to anything in Plaintiff's Exhibit 177

A. Yes. I contributed -- I said, "see notes S1, S4 and S5." I evidently had red-lined or wrote on those sheets or comments related to the site plan. I indicated there was a $5,000 site restoration landscaping bond that would be required prior to the issuance of the permit. And there was a $500 site inspection fee to be paid to the Engineering Department. And I also indicated that the ordinance that would allow this project to be approved was not in effect until May 1st, 1996.

Q. And unless otherwise changed by legal action or referendum, you said?

A. Okay. I guess I did say that, yes.

Q. And do you know how you came up with the date May 1st, 1996?

A. I believe that probably was given to me by my secretary, who probably coordinated with

someone in the Law Department to get that date. I didn't do that, but I was told that's the date.

Q. And if the plaintiffs had met items 1 through 4, you would have then approved the project for building permits, is that correct?

[p. 145]

A. Only if I would have gone out and ascertained that Mr. Boone had also constructed the fence that was required prior to the building permit issuance and graded the property at the rear in accordance with those stipulations.

Mr. Boone had already applied for a building permit for the fencing and we had a conversation that indicated to me I thought he was proceeding immediately with that. And that wasn't mentioned in this response, but subsequent to that he did not proceed with the fence. And would he have applied for the permit, even having met those other three or four requirements, I would have made sure that the fence, the work had been done.

That was to make sure there was no trash or any associated offensive activity that would have been observable or blowing or taking place on the property to the south. We were trying to make sure that these neighbors started off on the right foot.

Q. Now, with regards to going back to Plaintiff's Exhibit 14, Mr. Sharp.

A. Yes.

Q. Plaintiff's Exhibit 14 is the reply by Buckeye's architect to Plaintiff's Exhibit 17, is that correct?

A. Yes.

Q. And did you receive a copy of this around May 16th of 1996?....

[p. 150]

THE COURT Okay. Do you want to talk about it?

MR. KRAMER: Yes, your Honor.

(Discussion between court and counsel at the bench, and off the record.)

BY MR. KRAMER:

Q. Mr. Sharpe, when you submitted the staff recommendation to approve the site plan, did it meet, in your mind, all the necessary requirements set forth that had to be considered for approval?

A. At that time, yes.

Q. And has your opinion changed on the site plan since then?

A. Yes. Because of the ruling by the judge that the charter and referendum was valid. So as of

today, I would not, and would not approve the application for the building permit.

Q. But the site plan itself has not changed since the time you found it to be, in your mind, meeting all legal requirements?

A. No. The site plan hasn't changed, nor has the rules. The rules have always been there too, they have just been interpreted.

MR. KRAMER: Can I have one moment, your Honor?

THE COURT: Sure.

[p. 154] ...the stipulations?

A. Yes.

MR. ARRINGTON: I have nothing further.

THE COURT: Mr. Morrison.

MR. MORRISON: Yes.

DIRECT EXAMINATION

BY MR. MORRISON:

Q. Mr. Sharpe, I just have one or two brief questions. I think you may have said this already but lest I miss it, I want to make sure as we sit here today, a fence has not been erected on the property, correct?

A. Correct.

Q. Is the erection of that fence a prerequisite to the plaintiffs obtaining their building permit for the construction of the physical building itself?

A. It's one of several, yes.

Q. One of several. But it is at least one, correct?

A. Yes.

Q. And as we stand here today, as the person in the City of Cuyahoga Falls that's responsible for building and zoning, can you tell his Honor whether or not as we sit here today the plaintiffs are eligible -- notwithstanding the referendum vote -- are eligible to obtain a building permit on this project?....

[p. 156]

THE COURT: Please. Now counsel, I believe you have another question.

MR. KRAMER: Yes, your Honor.

RECROSS EXAMINATION

BY MR. KRAMER:

Q. As the Planning Director for the last 20 years, do you know of any rational reason for rejecting the site plan that you could state today?

THE COURT: In his mind.

MR. KRAMER: In his mind?

A. Today I can say that it can be rejected because Judge Murphy ruled that a referendum of the

voters takes precedent over any other laws under the Charter of the City of Cuyahoga Falls, and thereby the building permit which is tied to the site plan can't be issued, and I reject the application on that basis for the building permit.

The site plan has been approved. I have no rational reason whatsoever to say that there is anything wrong with that site plan as professionally. I mean personally, or if I was involved as a neighborhood, I might have a hundred rational reasons.

You are asking me to make a judgment about other people's rationale. And the plan met the requirements of the City of Cuyahoga Falls in all [P. 157] respects, it exceeded those, and I would find no reason to deny it on a legal or professional basis.

MR. KRAMER: Thank you.

THE COURT: Thank you, sir. You may step down, sir.

THE WITNESS: Thank you.

THE COURT: And your next witness is?

MS. CITRINO: Plaintiffs call Sandra Montgomery.

THE COURT: Miss Montgomery.

MR. ARRINGTON: Your Honor, for the record, we would reject to the calling of this witness. She was not disclosed to us.
I don't know, was she on the list Friday or Monday?

I'm not sure she is on any of the lists that we got.

MS. CITRINO: Your Honor, I do believe that he's correct. And what happened is we are trying to find potential members of the Fair Housing Contact Service, one of the plaintiffs here, who are interested in renting the unit. We can place another witness on.

MR. ARRINGTON: Your Honor, so the court is aware, I just now noticed she is on the list that I received yesterday at 3:30, but I still object for the....

[P.202] follows:

DIRECT EXAMINATION

BY MR. KRAMER:

Q. Would you give your full name and spell your last name?

A. My name is Mark Salling, S-A-L-L-I-N-G.

Q. And are you employed?

A. Yes, I am.

Q. And where are you employed?

A. I'm employed at the College of Urban Affairs at Cleveland State University.

Q. And what is your position at your employer?

A. I'm the Director of the Northern Ohio Data and Information Service at the college. And I'm also adjunct faculty in the Department of Urban Studies.

Q. Dr. Salling, would you look at what's been marked as Exhibit 18-T. Can you identify that document?

A. Yes. This is an analysis that was performed at your request.

Q. And would you go to Appendix 2 of that Exhibit 187

A. Yes.

Q. And could you identify that part of the document, please?

A. That's my resume.

Q. Could you tell the court your general education background?

[P. 203]

A. I have a Ph.D. in geography from Kent State University.

I'm sorry, did you just say educational?

Q. Yes.

A. I have a Masters degree in geography at Cincinnati. I have a Bachelors degree in geography at Kent State University.

Q. And what types of academic and professional experience do you have?

A. In my capacity at College of Urban Affairs I am involved in the use and distribution of demographic data, particularly the US census data. I am also involved in a variety of research projects using demographic data and related information. And I also teach, on an occasional basis, in the Department of Urban Studies courses such as urban special systems and research methods and in Demography and the Sociology Department as well.

Q. How long have you been director of NODIS?

A. Since 1982.

Q. And do you have any professional affiliations or awards or service recognition?

A. Yes. I received a service award from an association, National Association of Professionals Working in Computers and Hethods in Urban Agencies called URISA. I've also [P. 204] received an NSF funded fellowship to do work in a field called geographic information systems.

I'm sorry, I'm associated with some associations such as URISA in a variety of ways, including being the editor of its proceedings, annual proceedings. I'm a member of the

URISA Journal Editorial Board. And I'm active locally in a number of state and local organizations dealing with census data, demographic issues, and geographic information systems.

Q. And have you received any recent grants or contracts?

A. I received a number of grants and contracts. The latest one is a project in which we are working with local boards of elections using census data to help them move precinct boundaries to be in more conformance with census geography and, among other things, about a number of research grants as well.

Q. And are those listed in Appendix 2?

A. They are for the most part. There are probably some missing.

Q. Have you published in any professional magazines or articles?

A. Yes, I am published in some scientific publications. One of the most recent is the Annals of the Association of Geographers, co-authored a paper with some other colleagues on the issue of whether or not there is a disparate [P. 205] distribution of toxic release sites in Cuyahoga County relative to certain populations.

Q. Was that based on race of populations?

A. We looked to see whether or not the release of the location of release of toxic emissions was correlated with the minorities and low income populations.

Q. And was that a peer review publication?

A. Yes, that's a peer review publication.

Q. Have you had any other peer review publications?

A. Yes. I also had, last year, a peer review publication in the URISA journal. And I've also had one or two others in the past.

Q. Have you presented any papers?

A. I presented papers fairly frequently, at least one or two a year, at various professional and academic associations.

Q. And are those also listed in Appendix 2?

A. They are listed.

Q. Can you tell me what is meant by "human geography"?

A. Geography is broken into two major branches, physical geography and human geography.

Physical geography studies things like geomorphology, climatology and other physical earth science subjects.

Human geography is more akin to a social [P.206] science, looking at social, political, economic distributions, and that sort of thing.

Q. And can you define what a demographer is?

A. A demographer is someone who focuses on human population, how -- its characteristics of the population, how it changes over time and what its impact has on society, the economy and other aspects.

Q. And in the area of human geography and demography is the use of statistics important?

A. It is very important in order to analyze the world. In our way we use data quite a bit and the use of inferential statistics is critical.

Q. And can you tell me a little more about what the Northern Ohio Data Information Service does and is?

A. The Northern Ohio Data and Information Service, otherwise known as NODIS, does demographic analyses for clients and for researchers and with researchers at the university.

One of our principal functions is to provide census and other public information to the public in general and to governmental agencies, organizations who need that kind of information.

Q. And in your job as Director of NODIS, are you often involved in doing statistical analysis?

A. Yes, both for clients and also for researchers and [P. 207] for ourselves to understand the

demographic trends and patterns that are going on in our region and in the state.

Q. And have you ever used statistical analysis in determining racial make ups of various communities in the State of Ohio?

A. We have looked at the distribution of racial make up in the State of Ohio, and we have mapped it.

For example, we have used races in what is called an independent variable in order to try to a account for or explain the distribution of other kinds of phenomenon.

Q. And is it fair to say that you consider yourself as a human geographer and a demographic person?

A. Yes.

MR. KRAMER: Your Honor, we would move that this court certify Dr. Salling as a expert in the area of human geography and demographics.

MR. MORRISON: We would object to that, your Honor.

MR. ARRINGTON: We join the objection.

THE COURT: Mr. Schultz, any objection to that?

MR. SCHULTZ: Mo objection.

THE COURT: Go ahead.

MR. KRAMER: Thank you, your Honor.

Q. Have you been retained by plaintiffs' counsel in this [P. 208] case?

A. Yes, I have.

Q. And when were you retained?

A. I believe the date was November 6th.

Q. And what were you retained to do for the plaintiffs initially?

A. Initially on November 6th, I was retained to analyze census data in order to determine whether or not there was a disproportionate or disparate impact of building or not building the proposed development on the black population and households with children.

I was subsequently asked to perform a second analysis looking at whether or not there was a difference between the percentage of blacks in Cuyahoga Falls versus Summit County.

Q. And when were you retained to do that?

A. That was --

Q. That second study?

A. That was on the following Saturday, I believe. I'm sorry, the 16th.

Q. And that's the 16th of November?

A. Of November, yes, sir.

Q. Now, with regards to the first analysis, would you look at Plaintiff's Exhibit 18?

A. Yes.

[P. 209]

Q. Can you tell me what that document is?

A. That document is the result of the analysis that we were asked to perform concerning the disproportionate impact on minorities or on blacks and on families with children.

Q. Now, specifically for the proposed apartment development by Buckeye Community Hope Foundation?

A. That's correct.

Q. Would you tell me how you went about -- what methodology you used to make a determination in this area?

A. We used the most reliable information available in the US census that was taken in 1990. We used data from a portion of that census data called the public use micro data sample in order to specifically identify target groups for analysis. There are analyses for two geographic areas, so we could see if there was any significant difference between them, looking at the different areas in our analysis.

The first portion of the analysis we focused on the northern two-thirds or so of the county, which includes all of Akron and

communities in the northern section of the county.

Q. Could you tell me, does that include Cuyahoga Falls?

A. Yes, it does. Cuyahoga Falls is in the middle of that area geographically.

[P. 210]

Q. And can you tell me why you chose that particular geographic area to study?

A. We felt that the potential of the market for the rental population was probably in that vicinity, to a large extent, to the extent that as -- well, that the source of data that we were using would allow.

We also did a comparable analysis, a similar analysis for the entire County of Summit to see if there was any significant difference in changing the geographic area being used in the analysis.

Q. And so the first step in your methodology was to look at certain geographical areas for your analysis, is that correct?

A. That's correct.

Q. And then what was the next step?

A. Within that geographic area we identified two different groups. The first group constituted what we call the general rental market, where we identified from the census data all those

persons who were renting in that area in 1990. Then, as a secondary group to compare with, we identified what we called the development target market, which consisted of the same population. That is to say, renters, but renters in multi-bedroom apartment units. So that we were trying to identify the segment of the rental market which included persons living in multi-bedroom [P. 211] apartments in order to compare them with the general market of renters.

Q. Now why did you choose that second category to compare?

A. The proposed development includes units with two or more bedrooms in them, so we thought that the market therefore should focus on the population that would live in that kind"of housing.

Q. Did you do any other calculations with regards to excluding any renters from the general renter market?

A. Yes. For the purposes of identifying the development target market we also included only those persons that fell within the income guidelines as provided in the program that the development is designed for. That is to say, we used the income limits based on household size in order to further limit the size or the composition of the development target market.

Q. Now, I want to go back to the general renter market. Would you look at page 2 of your Exhibit 18?

A. Yes.

Q. Did you have any cutoffs with regards to renters using the general renter market or the target market population?

A. Yes. We did limit the general renter market to those renters who were paying at least $200 in rent in order to [P. 212] eliminate the very low rent rental population, and also to exclude persons who might be paying a nominal amount of rent, such as persons living with parents or others and paying nominal rents.

Q. And with regards to the target market population, you talked about income levels that you restricted that to. How did you come about to determine certain maximum income levels to be used?

A. Well, we used the income per size of--household size guidelines provided in the program for which the development is designed. And then when we identified households that met that income maximum threshold. We also adjusted -- because we were using census data from 1990, we adjusted those figures using the Consumer Price Index, which is a common methodology in order to compare dollar values for two different periods of time.

Q. So you used the CPI to bring 1989 data up to 1995 data?

A. That's a fair statement, yes.

Q. Was there any other information that you used, before leaving your methodology?

A. Well, once we identified the difference between -- we segmented the population into what we call the general renter market and the development target market. Then we wanted to compare the racial composition and household type [P. 213] composition in terms of whether they h~d children present or not and compare them between those two market segments.

Q. And would you go to page 3 of Exhibit 18?

A. Yes, sir.

Q. What is that, those tables on page 3 and concluding on page 4?

A. Table 1 focuses, again, on data for what we call the central or northern Summit geographical area. We did a comparable analysis that's in table 2 for the entire Summit County area.

Table 1 looks at the differences in racial composition between general rental market and the development target market.

MR. KRAMER: Your Honor, can I approach the witness.

THE COURT: Sure.

BY MR. KRAMER:

Q. Dr. Salling, maybe you can explain to the court the results of your table 1 and table 2 and your conclusions.

A. Okay. The general market is identified on this portion of the table. And you can see the raw numbers, the number of persons by race; white, black, other, and then total in the general renter market. And then the proportional distribution of those racial groups.

So that 79 percent of the persons in the [P. 214]general rental market in the central northern Summit County area are white; 18 and a half percent, approximately, are black; and 2.3 percent or so are of another race.

We did the same thing for the development target market.

Q. And explain again what is the development target market?

A. The development target market is a subsection or subportion of the general renter market only including those persons living in multi-bedroom housing units and meeting the income guidelines of the development.

Q. So it's people who would technically be qualified to be able to rent from the plaintiffs' project that was built?

A. Technically, qualified in terms of income and more likely to live there because of the type of housing, in terms of the number of bedrooms available.

Q. That's right. Thank you.

And could you go on and?

A. Yes. This column includes the raw numbers of persons by race in the development target market. This column is the percentage distribution of those racial groups, so that 68 percent are white, [illegible]ercent or so are black, et cetera. [P. 215]

Q. And from the comparison of these two groups, did You form any conclusion?

A. Well, what we did was we did a statistical analysis of the differences between the racial compositions in the two different types of markets. We asked the question, for example, is there a difference between 29 percent, which represents the black proportion in the development target market, and the 18 and a half percent, which represents the black proportion of the general renter market. And the resulting statistical value is indicated in this column, it's called the Z score. And the higher the Z score the higher the likelihood and the reliability that in fact those two proportions, 29.6 and 18.49, are indeed different beyond a reasonable sort of doubt. That is, beyond what might happen as a random occurrence.

And the interpretation of the Z scores is such that a value, a Z score of about 2 indicates that the researcher can be about 95 percent certain that the difference is not a random one.

That in fact there is something more to it than just random chance.

A Z score of a value of 5 indicates that there is less than a chance in ten million that there is such a random difference in those two numbers. And the value that we had derived here of over 23 indicates that the chances are in the billions that there is only a random [P. 216] reason for the difference in those two values.

Q. And from that did you reach a conclusion on whether or not in your central northern Summit County table 1, was there a disproportionate impact upon black families?

A. Yes. The results indicate that there are more black households proportionately who would live in such housing than in the rental market with which we compared that market.

Q. And if we now go down to Summit County, table 2, can you take us through the same calculations that you used and tell us your conclusions?

A. Again, the layout of the tables is identical; the general renter market numbers, by race of the developer's distribution and the development's target market end raw numbers and percentage distribution.

And the question we asked, is there a statistical difference, significant difference between the 25 percent of the development target market which is black and the 16 percent

of the general renter market which is black? Is there a difference between 25 percent and 16 percent?

And again, the Z scores were calculated. The Z scores are extremely high as they were and very similar to what we found for the smaller area we considered. And again, finding the same conclusion, that there is an [P. 217] extremely low -- I can't emphasize that word enough -that there is a probability, that there is a random difference in those two proportions.

Q. And what conclusions did you make oh on both table 1 and 2?

A. I would conclude, when we look at the northern two-thirds of the county or the county as a whole, there is a very significant difference in the proportion of black population that would be in the development target market versus the general renter market. There is a much higher proportion of blacks in the target market rather than the general renter market.

Q. Going to table 3. Was there any information on table 3 that you discovered needs to be corrected?

A. Yes. In fact, when I transcribed the table from a spreadsheet to my word processor to produce this table I inadvertently typed the labels incorrectly here. This is -- instead of with children, it's without children. And this is instead of without children, with children. And I mixed those two up when I typed it in my

word processor. And I did the same thing down here too.

Q. For table 4, too?

A. Yes, for table 4 the labels are incorrect, they should be switched.

Q. Can you manually, on Plaintiff's Exhibit 18 before [P. 218] you, make those corrections that you just testified to?

A. Yes, I can do that.

It's been done.

Q. All right. With those corrections, do your conclusions change at all?

A. No, not at all.

Q. And would you go through again, just as you did for table 1 and 2, the information on these two charts?

A. Okay. Again, this table 3, we are looking at the central northern Summit County area. We have identified the number of, in the general renter market, households that have no children in this case. And below that would be the number of such households with children in them. And the proportion in each of those two categories.

Q. For the purposes of the record, I think, would you go and actually give this information?

A. Sure. There are about 29,000 households in the general renter market in that geographic area

without children, about 13 and a half thousand with children.

THE COURT: By children you mean one or more?

THE WITNESS: One or more, yes. Yes, your Honor.

BY MR. KRAMER:

Q. And can we do the same thing now with the development target market?

[P. 219]

A. Yes, there are about 5,000 households in the more restricted development target market without children and about 66 hundred with children.

Q. And based on that information, did you draw any conclusions?

A. Yes. Again using the inferential statistics, the Z score, in order to ascertain whether or not there is a probability the differences might be due to some random chance, we find extremely high Z scores; in the order of 49 or 50, indicating that there is a very significant difference between the percent with children in the development target market versus the general renter market. Indicating that the development target market has much significantly higher portion of households that would be served by housing with multi-bedroom housing units.

Q. And could you go to table 4?

A. Table 4 is interpreted in exactly the same way. This is mislabeled actually. I'm not sure if that was in my report or not. This is Summit County instead of central and northern Summit County. You probably just blew up mine, so that's probably a typo in mine as well.

But again, the labels have been inverted here so that there are some 33,000 or 34,000 in the county households without children in the general renter market, that's about 67 percent of all such households, of all [P. 220] households; and there are some 16,600 households with children in that Summit County general renter market representing about 33 percent of the total.

Then we, in narrowing down the market to the development target market suitable for this kind of development, we find that there are 57 hundred or so households without children in Summit County; there are some almost 8,000 with children in the county. And the representative proportions are also identified there: 42 percent of the households have no children; some 58 percent do have children.

And again, the statistical analysis performed indicates extremely high Z scores, indicating that there is a very extremely low probability that the differences in such proportions might be due to some random chance.

Q. Would you turn to Appendix 1 of Exhibit 18. And can you identify what that part of the exhibit is?

A. Appendix 1 is simply my written results of the analysis that I just described.

Q. And turning to page 2. Can you tell me what is meant by these hypothesis null H-I and null H-27

A. Yes. In conducting empirical analyses using inferential statistics, the approach of a researcher is generally to specify the problem and then to operationalize the problem with the kind of data that you can use to [P. 221] address that problem, and to identify the specific question for which this data and your analysis will address.

One generally thinks in terms of what we would call the alternative hypothesis. One thinks of the hypothesis you think is true, and in order to test that statistically, you think of the opposite being true. And that constitutes, if that's true, that that's your null hypothesis. And statistically speaking, that's what you can really address using inferential statistics.

So one test, the proposition being proposed in the null hypothesis, if you can reject the null hypothesis, it supports your original or alternative hypothesis. If you cannot reject your null hypothesis, it pretty much discredits your original hypothesis.

Q. And what were the two null hypotheses that you presented for this analysis?

A. The two null hypotheses are as follows:

Black income eligible households are not a greater proportion of the multi-bedroom rental housing unit market than are black households in the general rental housing market.

Q. And can you tell me whether or not, based on the calculations that you did and your methodology, whether you could reject that hypothesis based on that data?

A. I would reject it.

[P. 222]

Q. And what's the second null hypothesis for this part of your analysis here?

A. The second null hypothesis is as follows:

Income eligible households with children are not a greater proportion of the multi-bedroom rental housing market than are households in the general rental housing market.

Q. And were you, based on the data analysis that you did, able to come to a conclusion with regards to that second null hypothesis?

A. I would reject that one as well.

Q. Would you turn to page 6 of Appendix I.

And would you tell me your specific conclusions that you came to under your study?

A. Based on the information that we had and used, the census data, and looking at the specific questions that we did, we concluded that race and family composition, as defined as households with or without with children, are significantly different in the development target market from the general renter market, no matter whether we are looking at the northern portion of the county or the entire county.

Q. And therefore, if the 72 units of the plaintiff's apartment complex would not be built, what conclusions would you form?

[P. 223]

A. There--

Q. If any?

A. I would conclude there would be a disproportionate impact on the black population and households with children.

Q. And can you tell me whether or not that is to a reasonable degree of scientific certainty?

A. It's with a high degree of scientific certainty and the data that we used.

Q. Would you go to what we have marked as Plaintiff's Exhibit 35. And could you identify that document?

A. Yes. That's a similar analysis using similar methodology, only in this case, simply comparing the proportion of the population which is black in Cuyahoga Falls with the proportion of the population which is black in Summit County.

Q. And can you tell me what data you used?

A. We used the 1990 Census of Population and Housing. Again we used -- I'm sorry, in this case we used the Summary Tape File Data.

Q. And if you turn to page 1 of Plaintiff's Exhibit 35. What was the methodology that you used?

A. We simply identified from the census data the number of persons in Summit County and in Cuyahoga Falls City separately that are white, black and other, and calculated [P. 224] the percentages of the population in each of those racial categories. And then compared the percentage black and the other racial categories as well between the county and Cuyahoga Falls City. And again, used the Z score as a test of the difference between proportions. Meaning that we were asking the question: Is the 11.8 percent black population represented in Summit County statistically different than the 1.06 percent that is black in Cuyahoga Falls City?

And the results, again indicated by the Z score, were extremely high Z score values, which indicate that there is a very large difference in those proportions and very

statistically strong difference in those distributions, those percentages.

THE COURT: You have proven that there are more in one location than another. What does that prove?

THE WITNESS: It simply documents the obvious in this case.

THE COURT: Which is the obvious.

THE WITNESS: Yes.

BY MR. KRAMER:

Q. And your conclusion in regards to that data, what are they?

A. Very simply, that there is a significant difference in the proportion of blacks in the city versus the county. [P. 225] That there is a very much lower proportion of blacks in Cuyahoga Falls City. And that difference is due to more than simply random differences in the data.

THE COURT: Do you suggest that that configuration somehow was allied arithmetically with your first findings or are they simply independent?

THE WITNESS: I have not considered that in the studies that I've done.

If you are asking for opinion or beyond the analysis, then I would answer. But in our analysis we didn't address that issue directly.

THE COURT: Thank you, sir.

BY MR. KRAMER:

Q. Can you tell me whether or not the methodology used in Exhibit 18 is that methodology that's usually recognized by other human geographers and demographic individuals?

A. Yes. In fact, it goes beyond just my field. It would be used in any scientific inquiry. These are elementary statistics used by most scientists.

Q. And with regards to Z scores of magnitudes over 7 -or 5, I mean, you indicated five is one chance in ten million of random probability?

A. Yes, that's true.

Q. When you have figures that you testified to, sometimes up to a 49 score, how many zeros would you be [P. 226] talking about?

A. I don't know the number of zeros but it's in the billions, I'm sure.

MR. KRAMER: Could I have one moment, your Honor?

THE COURT: Sure.

BY MR. KRAMER:

Q. Would you go back to Plaintiff's Exhibit 18 and go to page 3. Could you tell me what is the difference between a negative Z score and a positive Z score?

A. The negative and positive just indicate which number is larger. Essentially, in the case of the minus 23 it means the first number used in the calculation was actually -- the second number, I'm sorry. That the larger number was the second number used in the calculation when you subtract one from the other

THE COURT: Would you, for the record, indicate which one?

THE WITNESS: One subtracts the 79 percent from the 68 percent and gets a negative number.

BY MR. KRAMER:

Q. Other than that, it does not have any significance on the reliability?

A. Absolutely not. You could transpose the two numbers and get a positive number, which would be numerically the [P. 227] same otherwise.

Q. Thank you.

THE COURT: It's an arithmetic computation.

THE WITNESS: Yes, your Honor.

THE COURT: Mr. Arrington.

MR. ARRINGTON: Your Honor, if I could defer to Mr. Morrison first.

THE COURT: Sure.

CROSS EXAMINATION

BY MR. MORRISON:

Q. Mr. Salling, I have a few questions relative to the exhibits that you have been asked to identify. I believe the first exhibit has been marked as number 34. If you would take a look at number 34.

A. I don't think so. I have 18 and 35.

MR. KRAMER: 35.

BY MR. MORRISON:

Q. 18 and 35, I'm sorry. The first one is marked as 18, that's what I would like you to look at.

A. Okay.

Q. Before preparing this report marked as Plaintiff's Exhibit Number 18, have you ever, in your career, ever prepared a similar report comparing or making a comparison of the differences in race and the presence of children

[P. 228] between a general renter market and a target market for an apartment development?

A. Not for that specific market grouping.

Q. Have you ever done an analysis -- when you say not "for that specific market grouping," what are you talking about?

A. I've done, numerous studies of the differences in populations or samples, some of which are based on race; whether or not the racial

composition in one geographical area or one aspect is different than a racial composition in another sample or group. I've done that numerous times, never with this particular market segmentation comparison.

Q. My question is, have you ever done, as you call it, a market segmentation comparison? Have you ever, before preparing this report, done a market segmentation comparison for race and children?

A. I know not for children. I don't recall any study of that for race. I honestly couldn't remember specifically, but I wouldn't doubt that I had.

Q. All right. Have you ever been qualified as an expert to testify as to the analytical differences in a report such as you prepared in this case, Plaintiff's Exhibit Number 18, ever in your lifetime?

A. Not in a court such as this.

Q. In any courtroom have you? [P. 229]

A. Not in any courtroom.

Q. Not in any courtroom?

A. Not in any courtroom.

Q. Okay. Turn to Exhibit Number 35, I believe. And that is another report that you have prepared analyzing differences in racial composition between the City of Cuyahoga Falls and Summit County, Ohio.

Prior to your preparing this report for this case, have you ever prepared a similar report comparing the racial composition of any city or community within Summit County?

A. Not within Summit County.

Q. You have done it in Cuyahoga County?

A. Yes.

Q. In connection with any of those cases where you have ever prepared such a comparison, have you ever been qualified as an expert to testify on those matters in any court in the country?

A. Not in any court.

Q. Let me understand something, and we'll take Plaintiff's Exhibit Number 18 first of all.

In Plaintiff's Exhibit Number 18, if I understand correctly, what you have done is defined your general renter market as any individual?

A. Household.

[P. 230]

Q. Any household who would pay $200 or more per month for rent?

A. Correct.

Q. So conceivably there would be people in this courtroom that would fit within that general rental market?

A. Correct.

Q. And that general rental market would include virtually every household in Summit County that pays or rents for $200 plus per month?

A. That's correct, for the Summit County portion of the analysis.

Q. I understand you did two portions of the analysis, you did one in Summit County and one you called the north central region?

A. Yes.

Q. Let's stay with Summit County so we don't confuse the two studies.

So it's clear, what you basically did is two identical analyses using two different market areas. One is a four census region, which is Summit County, and one is a five census region?

A. No.

Q. Go ahead?

A. One is a four census county region and the other is simply all of Summit County.

[P. 231]

Q. Summit County is Summit County; and the four census county region is what you qualified as the north central region?

A. Yes.

Q. Let's stick with Summit County for the moment.

If I understand what you have done, you have identified, through your census data, the number of households in Summit County that pay more than $200 a month in rent?

A. Yes.

Q. And I believe that those numbers, as contained on the chart that you were testifying from, is about 49,000 families?

A. That's correct.

Q. Right?

A. That's correct.

Q. 49,000 families.

Then what you have done is you have taken some additional criteria, and that is a low income threshold and race, and you have carved out of that general market those individuals who fall within that subset of income threshold and race?

A. Not quite.

Q. Okay.

A. We subset the general renter market into a subset [P. 232] market not based on race. We compared race later, but based on whether they lived in multi-bedroom units and whether they met the income requirements of the development.

Q. You are right, I apologize.

So it's clear, after you identify the general rental market you then identified that subset of the general rental market that would meet the income threshold and would rent more than a single bedroom apartment?

A. Yes.

Q. And what you concluded is -- and if you want to look at your chart -- that within that subset in Summit County there were approximately 13,400 people within the subset identified by the income threshold and the multi-bedroom unit?

A. That's correct.

Q. So essentially, about a third of the total general rental market was represented by this, if you will, target market?

A. I believe it's more than a third but -- or less than a third, but yes. I think 13 thousand is something less than a third of 49,000.

Q. Okay. 30 percent?

A. Okay. I won't quibble.

Q. Okay. So is 30 percent a fair estimate?

[P. 233]

A. Get my calculator out and tell you exactly that-- 25, 30 percent.

Q. Okay, 25 to 30 percent.

And it appears that of that 25 or 30 percent of the total general rental market the

black population represents 25 percent, correct?

A. That's correct.

Q. If we look at the central northern Summit County analysis the numbers are a little different, which seems to suggest that there is a larger number of renters meeting the thresholds that you have described, that is the income and multi-bedroom. There are more individuals in Summit County than there are in the central northern Summit County?

A. Sure.

Q. What I don't understand is, does the central northern Summit County include boundaries outside of Summit County?

A. No.

Q. No?

A. No.

Q. All right. Explain, if you will, so I understand, if you look at table 1, which is for central northern Summit County, you show that there are among the African American population approximately 7,764 people in the general renter market?

[P. 234]

A. Yes.

Q. In Summit County, you show that there are 7,925 African Americans in the general renter market?

A. Yes, except they are households and not individuals.

Q. Households, I'm sorry.

A. Yes.

Q. Does that then tell me that other than the central and northern Summit County that there are less than 200 African Americans in the general renter market outside of central northern Summit County?

A. Yes. It implies that's an approximate number, yes.

Q. Where is the boundary line for the central northern Summit County?

A. I have a map I'm consulting.

The division line is Copley Township and Norton on the western side of the county. So that Copley Township is included in the central northern study area and Norton is not. And on the eastern side of the county, if I can read my map correctly, it looks like Tallmadge is the northern most community. The line basically goes straight across east, west, and all of Akron, however, is included in the central northern.

Q. Can you tell from that map whether or not the line that segregates the central and the southern is Route 224, otherwise known as Waterloo Road? Can you tell from that [P.235] map?

A. No, I can't.

Q. But suffice it to say, that in the southern part of Summit County there are less than 200 individuals in the general renter market that are African American, based upon your data?

A. Households. And it's an estimate.

Q. Households?

A. Yes.

Q. Do you know how many African Americans are within the City of Cuyahoga Falls that fall into the general renter market?

A. I didn't make that calculation, no.

Q. So we don't know whether or not the City of Cuyahoga Falls may indeed have more African Americans in the general renter market than does the entire southern portion of summit County, do we?

A. Except one can look at the population and look at the number of blacks in the city.

Q. Okay.

A. Which is 518.

Q. 518?

A. Yes.

Q. So we know then that there are at least -- well, we know there are only 200 some families in all of southern [P. 236] Summit County, right?

A. 200 something households meeting that criteria.

Q. Approximately?

A. Yes.

Q. Now going to page 3 of your report and going on to page 4. There you have done a similar analysis, however you have used instead of race as the variable, you have used households with and without children, correct?

A. That's correct.

Q. Look at table number 4 for a moment. And there you show that within Summit County in the general renter market there are some 50,000 people that would be with and without children but would be part of the renter market?

A. Households.

Q. Households, yes. Correct?

A. Yes.

Q. Did you do an analysis for his Honor to describe how many of those with or without children also fall among the group of African American?

A. No.

Q. Pardon?

A. No.

Q. You weren't asked to do that?

A. No.

Q. The development target market for Summit County [P. 237] relative to households with and

without children demonstrates that those meeting the criteria -- again this is the income criteria and the need for multiple bedroom housing?

A. Those living in multiple bedroom housing.

Q. Those living in multiple bedroom housing is about 13,721 people. Or again maybe -

THE COURT: Households.

BY MR. MORRISON:

Q. -- households, or about 20 percent?

A. About 26 percent, I would say.

Q. And of that 26 percent, 42 percent of those are people that do not have children, correct?

A. That's correct.

Q. Let's deal with your analysis on the issue of race.

You have indicated that the Z score tells you, as a statistician, that it is not by random chance -- your result is not by random chance?

A. That's correct.

Q. Are you able to tell his Honor why there are more or less African Americans in the development target market as opposed to the general rental market families?

A. Not from this analysis.

Q. Pardon me?

A. Not from this analysis.

[P. 238]

Q. So, when you say it's not by random chance, what you are telling us is, if you were to go and do this study again you would expect to find very similar results, that this wasn't just a chance calculation?

A. That's correct.

Q. Okay. You are not suggesting to this court or anyone here that you have any way of explaining why there are more or less people that fit into one category or the other?

A. Not from this analysis.

Q. And if in fact, if we place the limitation using the variables that you used, and that is when you defined your development target market you used an income criteria, and you used a multi-bedroom criteria?

A. Yes.

Q. If we apply that criteria to a general renter population, would you agree that clearly there is a large segment of that population that is not going to fit in your target group if they don't have children?

A. The difference between the two columns of numbers is the number I think you are alluding too.

Q. Precisely. What I'm saying is, if you change your development target market variables you will have a completely different set of numbers if you were to go back to your office and recalculate using some different variable?

[P. 239]

A. You would have some different number's perhaps.

Q. All right. What meaning -- I guess is what I'm trying to drive at, what meaning is there to the fact that you take a segment of the population households that rent and then you extract from that group a subset that is limited by virtue of income and multi-bedroom use?

A. I believe the answer is that the type of housing that's being built in this proposed development is designed for that market segment that we tried to measure.

Q. Well, certainly I think we would agree that we wouldn't build a three or four bedroom apartment for single living, correct?

A. Correct.

Q. Now, you had, just before Mr. Kramer was concluding with his questioning of you, you were describing the Z score and the significance of the positive or the negative. Does it matter whether it's a positive or negative Z score?

A. Only if you are concerned about which number is larger than the other.

Q. I'm not sure I understand that.

A. So, an example, is the--

Q. Let's look at table number 4 where they are identical. On page 4, table number 4, it says one is a negative 5334 and the other is a positive 5334. What is the significance of that?

[P. 240]

A. All it means, we -- in the calculation of the Z score, we were asking -- first of all, on the Z score we are asking are the two proportions different? In order to come up with a number of difference you subtract one from the other. And then you ask is that difference greater than zero?

And so if you subtract one number from the other number and the first number is larger you are going to have a negative number as a result. The calculation, the number, the raw number will be the same.

Q. Okay. But you are saying that if it's greater than zero. What if it's a negative number?

A. This negative number of minus .53 simply means that 67.14 is a larger number than 42.05.

Q. And the other one, which is 53.34 just means that the 32 is less than the 57?

A. That's correct.

Q. Okay, I think I understand something. Can we look at this chart for a moment? Maybe the

court can see this. And let's just take any one of these.

What you are telling us, I believe, is that if we take this number and subtracted this number we get this number?

A. No.

Q. No?

[P. 241]

A. No

Q. All right. This number being a negative tells us that this number is larger than this number?

A. That's correct.

Q. And this one with a positive tells us that this number is smaller than this number?

A. That's correct.

Q. And what you are looking for to determine how--whether or not there is a random difference between this percentage and this percentage is the size of this number?

A. That's correct.

Q. Okay. When you use the word "random" in that regard all you are saying is that because of the size of this number, the fact that this number is larger than this number is not just a random sampling?

A. Its not a random event; that something caused it.

Q. And you don't know what caused it?

A. No, I don't.

Q. For example, it may be that if there is an ethnic community, there may be certain ethnic communities where people want to live in an ethnic neighborhood, correct?

A. I suppose so.

Q. It may be that certain areas don't offer the same amenities that other areas offer, correct?

A. That's true. I'm sure there are lots of reasons, [P. 242] lots of explanations.

Q. But you are not here to tell us what those reasons are, is that correct?

A. That's correct.

Q. You can't tell us that any of those reasons relate to discrimination against families or children, can you?

A. Not based on this study.

Q. And you can't tell us that any of those reasons are based upon race discrimination, can you?

A. Not based on this study.

Q. Your second -- I'm almost done. Your second study which you did over this past weekend, I believe you say you got the assignment on November 16th?

A. Yes.

Q. And you were able to fax a copy of this report or get a copy of the report prepared on November 18th, right? Which was what, Monday?

A. Yes.

Q. Okay. Is it fair' to say that your conclusion in that report is merely that there is a larger percentage of blacks in Summit County than there is in Cuyahoga Falls?

A. By a very wide margin.

Q. And you would agree that if you did a similar study on any other segment of Summit County you may find similar results for such places as Stow, Monroe Falls, Green [P. 243] Township, Norton, Barberton, correct?

A. I'm sure that there are some that would have similar differences, some which have fewer differences, and some where the inverse is true, there is a higher proportion of blacks.

Q. And some where the inverse would be true where you would have a larger concentration, if you will, of African Americans?

A. Yes.

Q. And if you were to break it down further and divide it among African American, Caucasian, Asian, Hispanic, you might find a different percentage break out, correct?

A. Yes. We can quantify racial and ethnic segregation in many different places.

MR. MORRISON: I have no further questions. Thank you.

CROSS EXAMINATION

BY MR. ARRINGTON:

Q. Dr. Salling, how long have you been the Director of the Northern Ohio Data and Information Service?

A. Since 1982.

Q. So I understand your report -- and I'm going to tell you right now I don't understand your report -- you are referring to the terms "general renter market" and [P.244] "development target market." Do I understand it correctly that these are individuals who are currently renting their homes?

A. In the 1990 census data, yes.

Q. So we are talking about 1990 data?

A. That's correct.

Q. These aren't necessarily people who are looking for an apartment, are they?

A. That's correct.

Q. They are people currently renting?

A. That's correct.

Q. As of 1990 do you have any experience, training, education, in terms of the marketing of real estate?

A. Not the marketing, but my area of specialization is population migration. I look at why people move, where they do, and what numbers.

Q. You haven't analyzed this?

A. I haven't analyzed the specific numbers in this situation, no.

Q. You indicated in your report, I believe, that you made a decision to exclude the people who are paying less than $200 in rent?

A. Yes.

Q. And why did you do that?

A. Because we didn't feel that that population [P. 245] represented a sizable portion of the market for the development that we are talking about. We also were concerned that a fair number of those wouldn't be actually in the actual housing market. That is to say, they may be paying that rent as a nominal fee for living at home or other similar kinds of arrangements; they are not part of the general housing market as much, at least.

Q. Wouldn't it also be true, though, for people who are looking for an apartment, such as I was back in 1982, they would be living at home and not paying any rent?

A. That's true.

Q. And you would have no way of knowing who those people are?

A. That's true. In a way, this study represents a minimal approach to the data.

Q. When you made the decision to exclude the people who were paying less than $200 in rent, did you know what the number of those people were?

A. We did look at them briefly, yes.

Q. Explain to me what -- if I can find it now -- the public use micro data sample is?

A. It's a special computerized data base that the Census Bureau provides to people to analyze the data or to use the data. Most census data is released in what's called a summary form. That is to say, they will tell you the [P. 246] number of persons that meets certain categories of attributes, number of householders by race, or persons by age, and that sort of thing.

That kind of data is limited in that you can't do your own cross tabulation of the information. You don't have the raw data with which to ask questions, such as how many households meet specific criteria using other variables and data. And that's why we had to use the public use micro data samples. We had to target certain groups based on those criteria and they weren't available to us in the summary files.

Q. So I understand, though, the actual numbers and data that is in the public use micro data sample, that's in the 1990 census as well?

A. Yes, that's correct.

Q. And as I was sitting there I was trying to remember what I filled out on the census. Did I fill out forms telling you how many bedrooms were in my home and things of that nature?

A. Yes. The census was taken in actually two parts. Some questions were asked of every house and every individual such as age, house, race, sex, relationship to the households and that sort of thing. Another set of questions like income, occupation, ancestry and some other things were asked on a sample basis.

[P. 247]

Q. Looking back to 1990, I recall numerous television advertisements encouraging people to send in the data information. I take it that it's always the difficulty of getting people to respond to the census?

A. Yes. Yeah, the Census Bureau has had a recognized program of trying to reduce the so-called under count. And in every decennial census since, at least 1960 the under count has been reduced.

It depends on which segment of the population you are talking about. In general it's been declining.

Q. Is there any way of knowing what the under count was from the 1990 census?

A. There is a way of estimating it. The Census Bureau has elaborate methodology where they go in and resample in other areas in very intensive was to find out what the population characteristics are. And when they compare that intensive sampling and study with the results from the census, they can estimate the degree to which their data are incorrect or insufficient or in which there is an under count.

Q. If I could, I want to show you the blowup, and I believe this is of Exhibit 18. You had indicated that this table 4 stating central northern Summit County really should read Summit County?

A. That's correct.

[P. 248]

Q. When did you first discover that error?

A. This morning.

Q. And you were talking about, I believe, there are some errors concerning with children and without children. When did you discover those?

A. This morning.

Q. Prior to this morning, had you proofread your reports?

A. Yes, I had.

Q. And those errors simply got by you?

A. Yes. Actually I proofread the documents in several forms. And one of the final steps was moving it from the table of information from a spreadsheet, which I had proofed and evaluated and made sure that it was correct, and then I moved it into a word processing package as a table. And because the limitations of when I moved from one software system to another, I had to retype the label "with children" and "without children" and I simply mistyped them.

Q. Let me make sure I understand one other thing.

I believe when Mr. Morrison was asking you about the northern central Summit County and the southern part of Summit County, you were talking about the wide disparity of numbers with black households, you made a comment that these numbers are estimates?

[P. 249]

A. That's correct.

Q. Is that true of all the numbers that are in this report, these are all estimates?

A. That's correct. That's true of all the census data.

Q. The northern central Summit County, does that include Barberton?

A. I believe so, yes. I'm sorry. Barberton, yes. Barberton, let me make sure.

Q. Would it be okay if I looked at the map that you are looking at?

A. Sure. It's small, that's why I'm having a hard time finding the community names.

I'm sorry, it does not include Barberton.

MR. ARRINGTON: Can we mark this as an exhibit?

MR. KRAMER: I have no objection, your Honor. It's been identified by the witness.

MR. ARRINGTON: Is this part of the report? It's not in my copy.

MR. KRAMER: No, it's not part of the report.

THE COURT: I know where Barberton is, if that's your point.

MR. ARRINGTON: I understand. There are other communities. I think it's important to know where the boundary line is.

Q. Just so the record is clear, I'm now going to hand [P. 250] you what has been marked as Defendant's Exhibit A and ask you to identify that?

A. That's a map of Summit County showing -- with communities labeled, some other labeling -- shows the four geographic areas to which the public use micro data sample apply.

Q. And is the information on that map accurate?

A. Sure. Certainly.

Q. And is that a true and accurate copy of the original of that document, wherever it may be?

A. Yes.

MR. ARRINGTON: I have nothing further at this time, your Honor.

As I indicated, though, on Monday I received this report, Monday morning. I've not had -- or Monday afternoon. I've not had an opportunity to consult with my own expert, whoever that might be. And so at this point I can't really say for sure I don't have anymore questions because I don't know enough about this report to be able to say that.

THE COURT: Sir, I don't mean to beg a question, but I want to be accurate.

The formulation of the Z score which you show on each of the charts, is a function of what?

THE WITNESS: It is a comparison of two [P. 251] proportions and the sample size that -- or the number of observations used to come up with that proportion.

THE COURT: What numerical scores or sets would I use to arrive at the 2316 Z score?

THE WITNESS: You would use the two proportions being prepared.

THE COURT: Which in this case are what?

THE WITNESS: If we look at table 1, for example, if we are comparing the 29.6 percent, which is the percentage of black in the development target market, to the 18.49 percent, which is the percent black in the general renter market.

The question we are asking is: Are those two percentages really different from one another? That is to say, if you subtract one from the other do you have a value that's close to zero? If they are the same you would get a difference of zero.

THE COURT: How do you configure the 2377.

THE WITNESS: The 2377 is calculated using that formula, your Honor. And it is -- the top portion of that formula, you will see, is one proportion minus the other proportion, and that's all divided by a continuation of that formula which includes more of the percentages and sample size from which those two proportions were gathered.

[P. 252]

THE COURT: It seems to me that was part of what Mr. Morrison's question was. Are you saying that there is a formula I can approach to this that -- at least I don't have at this point, I'm not faulting you, but I want him to be able to understand.

THE WITNESS: I'm sorry, I don't understand the question.

MR. KRAMER: I'm sorry, your Honor. I wonder if -- is page 4 of Plaintiff's Exhibit 18, is that the formula?

THE WITNESS: That's the formula for the Z score.

THE COURT: Fine, that will answer it. Thank you.

That applies in each case?

THE WITNESS: That's true.

THE COURT: Okay.

I'm sorry, Mr. Schultz. Do you have anything?

MR. SCHULTZ: No, your Honor.

THE COURT: Mr. Kramer?

MR. KRAMER: Your Honor, we have no further questions for the witness.

THE COURT: Thank you, doctor.

THE WITNESS: Thank you.

MS. CITRINO: Plaintiffs call Councilman George ...

[Testimony of Lee Minier]

[p. 283]

Q. Will you ever do that again?

A. Never again.

Q. Why not?

A. It's cost me money, it cost me in attorneys fees because I had to get a motion to remove me from a deposition because I was going to be out of town. I couldn't get a hold of the attorney that filed -- gave me the subpoena to begin with, so I couldn't get removed. had to get an attorney to file a motion to protect me. It's probably going to cost me $800 in attorneys fees. It's cost me a couple days work now.

We feel that the politicians really don't care about our situation and the concerns that we have raised and I've really become quite disgusted with the whole thing.

MR. ARRINGTON: Thank you.

THE COURT: Mr. Morrison.

CROSS EXAMINATION

BY MR. MORRISON:

Q. Mr. Minier, I just have a couple questions. I represent Mayor Robart in his individual capacity. I want to ask you a couple questions about the Mayor's involvement.

Did the Mayor orchestrate or schedule any of[p. 284] the meetings at any of the houses that you attended?

A. No, he did not.

Q. Did the Mayor initiate or come up with the idea of the citizens getting together and looking at the option of a referendum?

A. No, he did not.

Q. You talked about the fact that the Mayor discussed with some of the members of the referendum group the fact that the city had been through a referendum on prior occasions, correct?

A. Yes.

Q. Was that at the request of some of your members as to whether or not the Mayor could give you some details on what happened in that referendum?

A. It may have been, but I think he was just voicing some of his experience and how shocked he was that this had happened to him to begin with.

Q. That in fact a referendum had been used against the city?

A. Yes.

Q. And Greg Wagner had been the one that initiated that?

A. Yes.

Q. The Mayor had not been involved in initiating that prior referendum, had he?

A. Not that I'm aware of.

[p. 285]

Q. Do you recall a meeting where the Mayor came to one of the houses, had been invited in, and brought some videos or some photographs? Were you at any meeting where that occurred?

A. We were at a meeting, he had gone to one of the facilities I think that the Buckeye Foundation had developed.

Q. Okay.

A. And he had taken some videotapes. And we had invited him to one of our meetings. And when he came in he said he had some tapes in the car if we would like to see them. And we all had adamantly said we were not interested in seeing the tapes.

Q. But he did volunteer to let you see those videos, did he not?

A. Yes.

Q. The town meeting that was held, I believe in April when the petitions were handed out to be distributed or distributed for signature, do you recall that?

A. You are talking about the petitions for the referendum?

Q. Yes, I'm sorry, the petitions for the referendum.

Did the Mayor orchestrate that meeting?

A. No.

Q. All right. Did the Mayor participate in circulating [p. 286] petitions?

A. No.

Q. To your knowledge, did the Mayor sign any of the petitions?

A. Not that I'm aware of.

Q. You were asked about your comments concerning Prange Drive, and I believe you told us that you have been in the area of Prange Drive or on Prange Drive on one occasion, is that correct?

A. That's correct.

Q. Other than that one occasion where you physically observed what was going -- the going ons, if you will, on Prange Drive, are you familiar with any other aspect of Prange Drive based upon your living in close proximity to Prange Drive?

A. As far as?

Q. Anything about it?

A. I really don't know anything about Prange Drive other than the fact I drove down it that one time after our first meeting to see what was there.

Q. So anything that you would know or have heard about Prange Drive would be based upon someone else telling you something, hearsay?

A. It would be hearsay, yes.

Q. Mr. Minier, what was your personal overriding concern...

[Testimony of Don L. Robart]

[p. 335] ... First of all, is that statement contained on page 13 attributable to you?

A. Yes, it is.

Q. And on that statement, do you relay to City Council the fact that there had been -- that one only need look at the police blotter to know some of the problems on Prange Drive?

A. Yes.

Q. Now, the March 4th meeting was a City Council meeting and certainly you were invited and entitled to attend as Mayor, correct?

A. Yes.

Q. What about the March 18th, meeting. Was that also a City Council meeting?

A. The 4th and 18th are both what we call committee meetings. And the Planning and Zoning Committees would have met and discussed this issue.

Q. That's a public meeting, it's open and you are invited to intend?

A. Yes.

Q. And with regard to the North Hampton meeting that was at the Town Hall, was that a meeting you were invited to attend?

A. Yes.

Q. Mayor, did you personally ever take a leadership role [p. 336] in promoting the referendum in this case?

A. No.

Q. Did you do that? Did you did you ever, in your individual capacity, go out and circulate referendum petitions?

A. I did not.

Q. Did you ever go out and knock on doors and encourage people to circulate petitions?

A. I did not.

Q. Mayor, as you can best recall, including the meetings that you had with the residents in their homes and the public meetings that you attended, did you ever make any racially

discriminatory remarks about the Pleasant Meadows development?

A. I did not.

Q. Did you ever make any discriminatory remarks about families having children living in the Pleasant Meadows apartment?

A. I did not.

Q. Did you do that either in your individual or official capacity at any time?

A. I did not.

MR. MORRISON: I have nothing further, your Honor.

THE COURT: Mr. Arrington.

***

[The following was Introduced as Exhibit 18 in the Transcript of the Preliminary Injunction Hearing, dated November 19-21, 1996]

An Analysis of Differences in Race and Presence of Children Between the General Rental Market And the Target Market for the Apartment Development Proposed by Buckeye Community Hope Foundation In the City of Cuyahoga Falls, Ohio

By

Mark J. Salling, Ph.D.
Director- Northern Ohio Data & Information Service (NODIS)
With Assistance from
Mark Hoffman
Research Associate - NODIS
The Urban Center
Maxine Goodman Levin College of Urban Affairs
Cleveland State University

For

Fair Housing Law Clinic
3214 Prospect Avenue, East
Jeremiah Ensworth House
Cleveland, Ohio 44115-2600

November 18, 1996

Buckeye Community Hope Foundation, et al. vs. City of Cuyahoga Fall, et al.
Information required by Federal Rule 26(a)(2)(B)

1. Complete statement of all opinions to be expressed and the basis and reasons therefor:

Based on an analysis of racial and family composition in the region's existing multi-bedroom rental units and household income eligibility limits which match those of the proposed residential development, the addition of the residential development proposed by Buckeye Community Hope Foundation would, all other things being equal, enhance housing opportunities more for Blacks and families with children than it would for Whites and households without children. Conversely therefore, not building this complex of 72 rental units would have a disparate and negative impact on the housing opportunities of Black renter households and families with children. The statistical reliability of the empirical analysis is extremely strong. See the attached analysis in Appendex 1 for details.

2. The data or other information considered by the witness in forming the opinions:

The following methodology was used..

Source of Data

Data used in the analysis are from the 1990 Census of Population and Housing, Public Use Microdata Sample (PUMS) - 5 Percent Sample. These computerized person and household level data files permit the researcher to cross tabulate the Census variables as needed. Census hard copy publications

and data found in the Bureau's Summary Tape Files do not enable the researcher to identify customized categories of the population, such as Black households living in two-or-more bedroom units by income. The PUMS data do provide this capability though at the expense of geographic detail in the data. The researcher can only characterize demographic and housing attributes for population and household groups based on relatively large areas (totally greater than 100,000 in population). This limitation dictated the analysis area delineation described below.

Geographic Areas of Analysis

Analyses were performed using two market area definitions - one consisting of all of Summit County and the second, the Central-Northern region, consisting of the northern two-thirds of Summit County (see map).

The Central-Northern region consists of all of the City of Akron and the communities of Summit County lying to the north of the Norton City - Copley Township boundary on the west side of the County and north of the Mogadore Village - Tallmadge City boundary on the east side of the County. This area consists of three of the four Census-defined PUMS areas in the County (known as Public Use Microdata Areas or PUMAs). Cuyahoga Falls is located centrally within this area.

Defining the General Renter Population and the Development Target Market Population The following two groups of households were identified and their racial and household type (with and without children) were compared:

General Renter Market-

- renters paying $200 or more for rent. These households represent the larger potential market for rental housing; fewer than 15 percent of renter households payed less than $200 in the 1990 Census, and these are not likely to consider the Buckeye Community Hope Foundation housing development.

Target Market Population (i.e., income-eligible, multi-bedroom households)-

- renters paying $200 or more for rent, renting units with two or more bedrooms, and having incomes below the eligibility limits set for the development as specified below. Because 1990 census data represent 1989 incomes, the income estimates provided by the PUMS data have been adjusted by the Consumer Price Index (CPI) to more *accurately* reflect current income levels.

Household Size	Maximum Income
1 -person	$17,340
2-person	$19,800
3-person	$22,320
4-person	$24,780
5-person	$26,760
6-person	$28,740

This Target Market Population represents households that are the target market for the Buckeye Community Hope Foundation housing development.

3. Any exhibits to be used as a summary of or support for the opinions:

RACE

Central-Northern Summit County

Table 1

	General Renter Market	Percent	Development Target Number	Percent	z-score
White	33,263	79.22%	7,783	68.13%	-23.16
Black	7,764	18.49%	3,381	29.60%	23.77
Other	963	2.29%	260	2.28%	-0.11
Total	41,990	100.00%	11,424	100.00%	

There are proportionally more Black households who are in the Development Target Market (DTM) than in the General Renter Market in Central-Northern Summit County. This difference is a highly statistically significant as indicated by the extremely high z-score of 23.77.

Summit County

Table 2

	General Renter Market	Percent	Development Target Number	Percent	z-score
White	40,141	81.76%	9,714	72.39%	-22.14
Black	7,925	16.14%	3,422	25.50%	22.76
Other	1,028	2.09%	283	2.11%	0.11
Total	49,094	100.00%	13,419	100.00%	

The results for Summit County are very similar to those for the Central-Northern region.

HOUSEHOLDS WITH AND WITHOUT CHILDREN

Central-Northern Summit County

Table 3

	General Renter Market Number	Percent	Development Target Market Number	Percent	z-score
Without Children	40,141	81.76%	9,714	72.39%	-22.14
With Children	7,925	16.14%	3,422	25.50%	22.76
Total	49,094	100.00%	13,419	100.00%	

There are proportionally more households with children who are in the Development Target Market (DTM) than in the General Renter Market in Central-Northern Summit County. This difference is a highly statistically significant as indicated by the extremely high z-score of 49.64.

Central-Northern Summit County

Table 4

	General Renter Market Number	Percent	Development Target Market Number	Percent	z-score
Without Children	33,964	67.14%	5,770	42.05%	-53.34
With Children	16,624	32.86%	7,951	57.95%	53.34
Total	50,588	100.00%	13,721	100.00%	

Again, the results for Summit County are very similar to those for the Central-Northern region.

4. The qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years:

A resume providing credentials and publications of the witness is attached as Appendex 2.

Compensation is $1,400.00 for the research and written analysis, plus $35.00 per hour for time spent in, traveling to, and traveling from the place of testimony. Compensation is paid to Cleveland State University to compensate for staff time and related resource utilization.

The witness has not testified as an expert at a trial or by deposition within the preceding four years.

Appendex 1

An Analysis of Differences in Race and Presence of Children Between the General Rental Market And the Target Market for the Apartment Development Proposed by Buckeye Community Hope Foundation In the City of Cuyahoga Falls, Ohio

By
Mark J. Salling, Ph.D.
Director- Northern Ohio Data & Information Service (NODIS) With Assistance from
Mark Hoffman
Research Associate - NODIS
The Urban Center
Maxine Goodman Levin College of Urban Affairs
Cleveland State University

November 18, 1996

This analysis concerns proposed development of an apartment complex in the City of Cuyahoga Falls by Buckeye Community Hope Foundation. The issue for which this analysis is preformed and presented is whether or not constructing the complex will have a disparate impact on housing opportunities for the Black population and for families with children.

Two questions are addressed.

First, is the development likely to include a disproportionate share of Blacks based on the combination of:

a) the number of bedrooms in the units; and

b)the income eligibility requirements for households living in the apartments?

Second, is the development likely to include a disproportionate share of households with children based on these same two considerations, i.e., number of bedrooms and income eligibility requirements for households living in the apartments?

In other words, the analysis compares race and presence of children in the household of those households that are eligible and perhaps likely to be renters in the complex with those in the general renter household population.

This analysis cannot determine who the renters in the development will be, nor can it determine the demographic and racial characteristics of the residents with any certainty. Many factors such as marketing strategies and other considerations are not within the scope of this analysis. What is considered is the relatively current (1990) demographic and racial compositions of renters in general and those for whom this development is designed to serve. Are there racial or family composition differences between such groups?

HYPOTHESES

The null hypotheses (NULL H1 and NULL H2) to be tested statistically are:

NULL H1: Black income-eligible households [1] are not a greater proportion of the multi-bedroom rental housing unit market than are Black households in the general rental housing market.

NULL H2: Income-eligible households with children are not a greater proportion of the multi-bedroom rental housing unit market than are household with children in the general rental housing market.

The two corresponding alternative hypotheses are:

H1: Black income-eligible households are a greater proportion of the multi-bedroom rental housing unit market than are Black households in the general rental housing market.

H2: Income-eligible households with children are a greater proportion of the multi-bedroom rental housing unit market than are households with children in the general rental housing market.

In inferential statistics, only null hypotheses can be rejected. If the null is accepted then the possibility of a true alternative hypothesis is in serious doubt; if the null hypothesis can be rejected, then the alternative is left as potentially true.

---

[1] Race of household in this analysis is determined by the race of the householder in the census data.

METHODOLOGY

The following methodology was used to test these hypotheses.

Source of Data

Data used in the analysis are from the 1990 Census of Population and Housing, Public Use Microdata Sample (PUMS)-5 Percent Sample. These computerized person and household level data files permit the researcher to cross tabulate the Census variables as needed. Census hard copy publications and data found in the Bureau's Summary Tape Files do not enable the researcher to identify customized categories of the population, such as Black households living in two-or-more bedroom units by income. The PUMS data do provide this capability though at the expense of geographic detail in the data. The researcher can only characterize demographic and housing attributes for population and household groups based on relatively large areas (totally greater than 100,000 in population). This limitation dictated the analysis area delineation described below.

Geographic Areas of Analysis

Analyses were performed using two market area definitions - one consisting of all of Summit County and the second, the Central-Northern region, consisting of the northern two-thirds of Summit County (see map).

The Central-Northern region consists of all of the City of Akron and the communities of Summit County lying to the north of the Norton City - Copley Township

boundary on the west side of the County and north of the Mogadore Village - Tallmadge City boundary on the east side of the County. This area consists of three of the four Census-defined PUMS areas in the County (known as Public Use Microdata Areas or PUMAs). Cuyahoga Falls is located centrally within this area.

Defining the General Renter Population and the Development Target Market Population The following two groups of households were identified and their racial and household type (with and without children) were compared:

General Renter Market -

- renters paying $200 or more for rent. These households represent the larger potential market for rental housing; fewer than 15 percent of renter households payed less than $200 in the 1990 Census, and these are not likely to consider the Buckeye Community Hope Foundation housing development.

Target Market Population (i.e., income-eligible, multi-bedroom households) -

- renters paying $200 or more for rent, renting units with two or more bedrooms, and having incomes below the eligibility limits set for the development as specified below. Because 1990 census data represent 1989 incomes, the income estimates provided by the PUMS data have been adjusted by the Consumer Price Index (CPI) to more accurately reflect current income levels.

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This Target Market Population represents households that are the target market for the Buckeye Community Hope Foundation housing development.

Statistical Test

The hypotheses are addressed using a test of proportions. This test uses the normal distribution to evaluate whether the difference between two proportions is statistically larger or smaller than 0. The computed statistic is the z-score, and it is calculated as follows:

$$z = \frac{p1 - p2}{\mathbf{SQRT}\left(\frac{(p1*(1-p1))}{n1} + \frac{(p2*(1-p2))}{n2} \right)}$$

where p1 = proportion 1,

p2 = proportion 2,

n1 = the sample size of proportion 1, and

n2 = the sample size of proportion 2.

The z-score indicates the confidence with which one can say that the two proportions are indeed different and that one is greater than the other. For reference to the results presented below, a computed z-score in excess of 2.0 means that one can be 95 percent sure that the observed difference is not due to random chance. A z-score of 5.0 means that the chance that the proportions are only randomly different is less than one in 10 million.

RESULTS

RACE

Central-Northern Summit County.

Table 1

	General Renter Market	Percent	Development Target Number	Percent	z-score
White	32,263	79.22%	7,783	68.13%	-23.16
Black	7,764	18.49%	3,381	29.60%	23.77
Other	963	2.29%	260	2.28%	-0.11
Total	41,990	100.00%	11,424	100.00%	

There are proportionally more Black households who are in the Development Target Market (DTM) than in the General Renter Market in Central-Northern Summit County. This difference is a highly statistically

significant as indicated by the extremely high z-score of 23.77.

Summit County

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	General Renter Market	Percent	Development Target Number	Percent	z-score
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Other	1,028	2.09%	283	2.11%	0.11
Total	49,094	100.00%	13,419	100.00%	

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HOUSEHOLDS WITH AND WITHOUT CHILDREN

Central-Northern Summit County

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There are proportionally more households with children who are in the Development Target Market (DTM) than in the General Renter Market in Central-Northern Summit County. This difference is a highly statistically significant as indicated by the extremely high z-score of 49.64.

Central-Northern Summit County

Table 4

	General Renter Market Number	Percent	Development Target Market Number	Percent	z-score
Without Children	33,964	67.14%	5,770	42.05%	-53.34
With Children	16,624	32.86%	7,951	57.95%	53.34
Total	50,588	100.00%	13,721	100.00%	

Again, the results for Summit County are very similar to those for the Central-Northern region.

CONCLUSIONS

Based on an analysis of racial and family composition in the region's existing multi-bedroom rental units and household income eligibility limits which match those of the proposed residential development, the addition of the residential development proposed by Buckeye Community Hope Foundation would, all other things being equal, enhance housing opportunities more for Blacks and families with children than it would for Whites and households without children. Conversely therefore, not building this complex of 72 rental units

would have a disparate and negative impact on the housing opportunities of Black renter households and families with children. The statistical reliability of the empirical analysis is extremely strong.

[The following was Introduced as Exhibit 23 in the Preliminary Injunction Hearing, dated November 19-21, 1996]

Buckeye Community Hope Foundation

947 East Johnstown Road, Suite 221
Gahanna, Ohio 43230
(614) 337-9718
FAX (614) 475-0348

June 7, 1995

Mayor Don Robart City of Cuyahoga Fails
2310 Second Street
Cuyahoga Falls, OH 44221

Dear Mayor Robart:

It was a pleasure speaking with you last week concerning our planned development on Pleasant Meadow Boulevard in Cuyahoga Falls.

Prior to the filing of an application with the Ohio Housing Finance Agency for low-Income Housing Tax Credits, as I'm sure you are aware, the applicant is required to notify the local executive political official. The purpose of this letter, as well as last week's phone call, is to apprise your office of our proposed housing development, Cuyahoga Terrace Apartments.

The development of Cuyahoga Terrace will be controlled by Cuyahoga Housing Partners Inc. (CHPI), a corporation registered to do business in Ohio. CHPI

is the Managing General Partner of Buckeye Community Three limited Partnership, an Ohio limited partnership. This partnership has been formed to develop affordable housing in Cuyahoga and plans to use Low-income Housing Tax Credits to provide equity for" Cuyahoga Terrace. The principal of Cuyahoga Housing Partners Inc. (Buckeye Community Hope Foundation) is very experienced and competent in the development of affordable housing, with projects spanning several states over 4 years.

The proposed development will be located in the northeast section of your city on Pleasant Meadow Boulevard, just west of Wyoga Lake Road. Cuyahoga Terrace is being designed to consist of 72 apartments on approximately 6.1 acres that is currently zoned for this use. The units will be 2 and 3 bedroom apartments.

Again, thank you for your time last week. I enjoyed our conversation and look forward to meting with you in the future.

Sincerely,

/s/_____

Steven J. Boone

[The following was Introduced as Exhibit 26 in the Preliminary Injunction Hearing, dated November 19-21, 1996]

FOLD OUT EXHIBIT

POPULATION PROFILE FOR SUMMITT COUNTY, OHIO

1990 Minor Civil Divisions

Population Profile for Summit County, Ohio
1990 Minor Civil Divisions

	County Total	Akron City	Barberton City	Bath Twp.	Boston Twp.	Boston Heights Village	Clinton Village	Copley Twp.	Coventry Twp.	Cuyahoga Falls City
POPULATION	514,990	223,019	27,623	9,015	1,879	733	1,175	11,130	11,265	48,950
SEX										
Males	246,590	105,192	12,923	4,514	960	358	567	5,357	5,457	23,179
Females	268,400	117,827	14,700	4,501	919	375	608	5,773	5,808	25,771
AGE GROUPS										
Under 5 years old	36,096	16,868	1,977	572	152	55	70	690	614	3,342
5 to 17 years old	89,693	37,683	4,988	1,775	307	126	222	1,936	1,716	7,775
18 to 20 years old	23,182	12,098	1,157	313	69	30	45	358	400	1,697
21 to 24 years old	29,322	15,474	1,476	336	85	32	54	478	545	2,668
25 to 44 years old	184,820	69,714	8,262	2,631	658	243	359	3,708	3,729	16,734
45 to 54 years old	62,100	18,927	2,393	1,436	236	88	147	1,340	1,278	4,537
55 to 59 years old	23,265	8,857	1,176	539	85	27	52	505	554	2,098
60 to 64 years old	25,495	10,227	1,528	503	83	33	62	480	661	2,609
65 to 74 years old	42,921	19,256	2,750	647	124	76	109	775	1,191	4,572
75 to 84 years old	21,391	10,445	1,461	216	67	18	44	526	497	2,249
85 and over	6,902	3,470	457	47	11	5	10	334	110	871
Under 18 years old	125,789	54,551	6,965	2,347	459	181	292	2,626	2,330	11,117
65 and over	71,214	33,171	4,668	910	202	99	163	1,635	1,798	7,492
RACE										
White	446,902	164,493	25,987	8,769	1,865	724	1,165	10,066	11,174	48,017
Black	61,185	54,656	1,453	96	4	2	3	899	35	518
American Indian, etc.	1,065	603	75	3	5	0	4	8	48	65
Asian, etc.	4,989	2,701	79	141	3	6	1	141	31	306
Other	849	568	29	6	2	1	2	16	7	44
Hispanic Origin	3,017	1,601	92	63	6	7	0	64	55	209
Non-Hispanic Race										
White	444,821	163,549	25,923	8,713	1,861	718	1,165	10,022	11,128	47,848
Black	60,848	54,358	1,445	93	4	2	3	890	35	515
American Indian, etc.	1,021	578	75	3	5	0	4	6	45	64
Asian, etc.	4,906	2,640	76	141	3	6	1	137	31	305
Other	379	292	12	2	0	0	2	7	1	11

98%

NOTES: (1) Racial Category "American Indian" includes American Indians, Eskimos and Aleuts.
(2) Racial Category "Asian" includes Asians and Pacific Islanders.
(3) Persons of Hispanic Origin can be of any race.
(4) Persons of "Hispanic Origin" and "Non-Hispanic Race" can be used together for comparison to datasets which consider Hispanic a separate racial category.

Source: U.S. Department of Commerce, Bureau of the Census, 1990 STF1A Dataset: Ohio. Prepared by the Center for Urban Studies, The University of Akron.

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